



# THE AMERICAN BANANA COMPANY

An account of the operations of Herbert L. McConnell in planting banana lands on the Sixola river, and of his acts in Costa Rica and Colombia (later Panama) relating thereto, with an explanation and copies of documents and correspondence. Also an account of the boundary controversy between the nations mentioned.

BY  
B. W. PALMER

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## C O N T E N T S.

	PAGE
INTRODUCTORY EXPLANATION . . . . .	i
<b>CHAPTER I.—H. L. McCONNELL LETTERS:</b>	
Important Letters from and to H. L. McConnell . . . . .	A
<b>CHAPTER II.—AGREEMENT OF H. L. McCONNELL NOT TO COMPETE, ETC.:</b>	
Agreement for the Formation of the Camors-McConnell Company and Agreement of H. L. McConnell not to compete with said Company . . . . .	1
<b>CHAPTER III.—THE ROMERO CONCESSION:</b>	
Copy of the Romero Concession . . . . .	6
Transfer of Romero Concession . . . . .	8
Suspension of Romero Concession . . . . .	11
Refusal of Panama to recognize Romero Concession . . . . .	12
Licenses to plant so-called (McConnell's only Titles) . . . . .	14
<b>CHAPTER IV.—THE AMERICAN BANANA COMPANY:</b>	
Prospectus of the American Banana Company . . . . .	23
Certificate of Incorporation of the American Banana Company . . . . .	26
Assignment from H. L. McConnell to the American Banana Company . . . . .	30
Transfer in Bocas from H. L. McConnell to the American Banana Company . . . . .	32
<b>CHAPTER V.—INJUNCTION PROCEEDINGS AGAINST H. L. McCONNELL IN THE UNITED STATES CIRCUIT COURT:</b>	
Opinion of Judge Toulmin granting Preliminary Injunction against H. L. McConnell . . . . .	36
Opinion and Judgment of the United States Circuit Court of Appeals, affirming Judgment of Circuit Court . . . . .	43
Testimony of John B. Camors . . . . .	45
Decree of Judge Toulmin granting Perpetual Injunction . . . . .	52
Perpetual Injunction . . . . .	53
<b>CHAPTER VI.—CORRESPONDENCE WITH AND ACTION OF THE STATE DEPARTMENT OF THE UNITED STATES:</b>	
Preliminary Letters . . . . .	55
McConnell's First Memorial . . . . .	71

Further Correspondence and Attempts to obtain <i>Modus Vivendi</i> from the Government of Costa Rica . . . . .	85
Communication of H. L. McConnell to the Secretary of State of Costa Rica, dated April 3rd, 1905 . . . . .	91
Letter of Minister Astua Aguilar dated April 12th, 1905 . . . . .	93
Letter of Everett P. Wheeler relating to McConnell's Second Memorial . . . . .	132
McConnell's Second Memorial . . . . .	135
Further Correspondence . . . . .	152
Letter of Minister Astua Aguilar dated March 3rd, 1906 . . . . .	154
Letter of Minister Root dated April 16, 1906 . . . . .	163
Letter of Minister Luis Anderson dated May 26th, 1906 . . . . .	170
Memorandum of Storey, Thorndike, Palmer & Thayer on the Law of <i>de jure</i> and <i>de facto</i> Jurisdiction . . . . .	178
<b>CHAPTER VII.—LEGAL PROCEDURE IN COSTA RICA:</b>	
Acquisition of the Astua Denouncement . . . . .	185
McConnell's Power of Attorney . . . . .	190
Decision of the Court of <i>Contencioso Administrativo</i> rejecting McConnell's Objections . . . . .	192
Decision of the Supreme Court affirming above, dated 13th of October, 1905 . . . . .	193
Decree of the Court of <i>Contencioso Administrativo</i> authorizing and directing the Execution of a Deed to the Northern Railway Company, dated January 26th, 1906 . . . . .	197
Protest of McConnell to Same . . . . .	200
Deed of the Lands covered by the Astua Denouncements to the Northern Railway Company, dated 14th March, 1906 . . . . .	202
Legal Procedure through which the Northern Railway Company obtained Possession of the Lands in Costa Rica included in the Astua Denouncements on which McConnell's Plantations lie . . . . .	211
Decision of the Supreme Court authorizing the Same . . . . .	223
<b>CHAPTER VIII.—MCCONNELL'S AGITATION IN PANAMA IN THE FALL OF 1906:</b>	
McConnell's Memorial addressed to the National Assembly of Panama on the Subject of the Jurisdiction of the Sixola Lands . . . . .	226
Open Letter on the Same Subject . . . . .	244
Reply to McConnell's Memorial by R. J. Alfaro (representing the Government) . . . . .	248
Report of a Committee of the National Assembly in Favor of McConnell . . . . .	258
Final Action of the National Assembly of Panama rejecting McConnell's Memorial . . . . .	263
Official Correspondence showing the Location of the <i>Status Quo</i> Line of Jurisdiction between Costa Rica and Colombia .	264

Letter of Julio Rengifo dated February 22nd, 1894, promising that Concessions of United States Citizens in the Disputed Territory would be respected by Colombia . . . . .	267
<b>CHAPTER IX.—EXPLANATION OF LAWS OF COLOMBIA AND PANAMA RELATING TO THE CULTIVATION OF UNOCCUPIED PUBLIC LANDS:</b>	
Extracts of the Laws cited by McConnell . . . . .	273
Opinion of Eusebio A. Morales on the Same . . . . .	274
Decree No. 92 of 1881 suspending the General Land Laws of Colombia from Operation in the State of Panama . . . . .	276
Resolutions of Colombia showing Decree No. 92 of 1881 still in Force . . . . .	277
Decree No. 4 of 1903 showing the Laws in Force in the Republic of Panama . . . . .	285
Executive Resolution of Panama dated July 11th, 1906, showing Decree No. 92 of 1881 in Force until Passage of Law No. 61 of 1904 . . . . .	285
Law 61 of 1904 suspending all Proceedings for the Acquisition of Public Lands in Panama . . . . .	288
Law 57 of 1887 showing Codes in Force in Colombia . . . . .	289
Law 61 of 1874 comprising Statutes for Denouncement of Unoccupied Lands in Colombia . . . . .	290
Law 48 of 1882 supplementing Same . . . . .	293
Decree No. 832 of 1884 relating to Law 61 of 1874 and Law 48 of 1882 . . . . .	296
Circular No. 94, dated October 15th, 1884, relating to above Laws . . . . .	303
Various Resolutions showing Operation of the above Land Laws in Colombia . . . . .	309
Forms for Procedure under above Land Laws of Colombia . . . . .	312
Same . . . . .	314
<b>CHAPTER X.—THE BOUNDARY CONTROVERSY:</b>	
Letter of Professor Edward Seler on the Boundary Dispute between Costa Rica and Colombia . . . . .	323
MAP showing Various Historical Boundary Lines between Costa Rica and Colombia . . . . .	<i>End of Volume</i>



## INTRODUCTORY EXPLANATION

(*The references at the bottom of the pages are to this publication.*)

### FORMATION OF CAMORS-McCONNELL COMPANY

HERBERT LEE McCONNELL, of Mobile, Alabama, had for a number of years been engaged in growing, importing and selling bananas. On the 22nd of July, 1899, he combined his business with others, and became a partner in the firm of Camors, McConnell & Company. His partners in the firm were Kroesman, Braden & Company, John B. Camors, Victor Camors, and possibly others. This firm engaged actively in the business of growing bananas and tropical fruits in Bocas del Toro, then under the jurisdiction of Colombia, now of Panama, and in selling the products in Mobile, New Orleans, and other places in the United States, and built up a large and thriving business with good credit, a good name, and a valuable good-will.<sup>1</sup>

On the 8th of December, 1899, the firm of Camors, McConnell & Company agreed to sell its business, good-will and property to Camors-McConnell Company, a corporation to be organized under the laws of New Jersey, for the consideration of \$40,125 par value in stock, and in the same contract A. W. Preston agreed to buy from the partnership one-half of the same stock or \$20,125 par value, for \$30,000. The partnership, therefore, were to receive \$20,000 in stock worth \$30,000, and \$30,000 in cash for their business, good-will and property, making a total consideration of \$60,000 in value.<sup>2</sup> As the tangible assets of the partnership were valued at \$30,000, the consideration to be paid for the good-will was \$30,000.<sup>3</sup>

In order to render effective the transfer of the good-will, H. L. McConnell and the other partners of Camors, McConnell & Company covenanted and agreed in the same contract that they would "not, either individually or by or through a corporation jointly or severally, directly or indirectly, engage in the growing or importing or selling of tropical fruits" in competition with Camors-McConnell Company.<sup>4</sup>

The Camors-McConnell Company was formed on the 12th of January, 1900, all the property, effects, good-will, and business of the partnership of Camors, McConnell & Company were transferred to it, the consideration was duly paid, and McConnell received his proportion thereof in stock and cash. According to the terms of the contract, McConnell

Firm of  
Camors,  
McConnell  
& Company.

Agreement to  
form Camors-  
McConnell  
Company, and  
not to  
compete.

<sup>1</sup>Deposition of J. B. Camors, page 45.    <sup>2</sup>Page 1.    <sup>3</sup>Page 48.    <sup>4</sup>Page 3, par. 5th.

was elected president and general manager of the Camors-McConnell Company, and served in that capacity from the formation of the company until January 21st, 1904.

Receipts of  
McConnell  
from Camors-  
McConnell  
Company.

From the organization of the company until February 18, 1904, shortly after McConnell left the position of president and general manager, he received \$12,950 for salary and \$77,666.25 for dividends aggregating \$90,616, all within a period of four years. This was certainly a very handsome return on the amount of capital invested by McConnell in the business, which did not exceed \$10,000. In fact, this sudden accession of wealth by one who had theretofore been in very moderate circumstances, and engaged in small affairs, turned his head.

As president and general manager of the Camors-McConnell Company, he had complete control and direction of all its business, both at Bocas del Toro where the plantations of the company were situated, and where it obtained its supplies of tropical fruits, and in the United States where the same were sold.

#### MCCONNELL'S SECRET PLANS

Early in 1903 McConnell began secretly to plan to engage in the business of planting and dealing in bananas on his own account. In April, 1903, he began planting tracts of land on both banks of the Sixola River.<sup>5</sup> He obtained from one Ricardo Roman Romero, a Colombian subject, a concession (more fully explained hereafter), purporting to give the concessionaire the right to build a railroad from the right (or southerly) bank of the Sixola River, to Gadocan on the Caribbean Sea.<sup>6</sup> The concession was dated April 2, 1903, and on May 1st McConnell obtained an assignment, having paid for it one hundred dollars to Romero, five hundred dollars to one Mott, who had some interest, and having agreed to pay Mott five hundred dollars more if the port mentioned in the concession should prove a success. It is safe to say that he has not paid this latter sum.<sup>7</sup>

He begins  
planting on  
the Sixola  
River and  
acquires the  
Romero  
Concession.

Sixola River  
the jurisdic-  
tional boundary.

Impossibility  
of obtaining  
title to  
Sixola Lands.

The Sixola River divides the jurisdictions of Costa Rica and Panama, pending the settlement of the true boundary, as will be explained later. This line of division has existed for at least one hundred years, and the territory on the left or north bank of the Sixola has always been under the jurisdiction of Costa Rica. McConnell well knew this, for he so stated in the letter to T. D. Nettles, dated April 23, 1903.<sup>5</sup> Furthermore, he knew that he could not obtain any title to the lands on either side of the river. As to the lands on the south side of the Sixola, the general laws of Colombia

<sup>5</sup> Letter to T. D. Nettles, April 23, 1903, page A.

<sup>7</sup> Copy of transfer on page 8. Payment to Mott, page F.

<sup>6</sup> Copy on page 6.

relating to the denouncement of unoccupied public lands were not in force in the Department of Panama. This was brought to McConnell's attention by his attorney, R. K. Warren, in a letter dated July 8, 1903, in which the latter, after consulting McConnell's counsel, said, "It seems that under the present law all Panama province lands are open and title to same cannot be secured except by special act or confirmation by special dispensation from Bogotá."<sup>8</sup> As to those on the north side, McConnell himself stated that he understood that Costa Rica retained possession as far as the north bank of the Sixola, and that titles to lands along navigable streams and the ocean front remained in the government. (Letter to F. J. Alvarado & Co., Port Limon, April 23, 1903,<sup>9</sup> letter to T. D. Nettles, same date.) In fact, McConnell actually opposed the acquisition of these very lands in Costa Rica by another person, on the ground that the title to the navigable mile along the river remained in the government of Costa Rica.<sup>10</sup>

Besides this, the soldiers of Costa Rica actually stopped McConnell's operations when he first went on the land in that country, and it was only after he had made some "temporary arrangements" with the commanding officer that he was permitted to proceed. This permission, however, as McConnell expressly admits, was contrary to the commanding officer's orders, and the work was liable to be stopped again at any time. (Letter McConnell to Nettles, April 23, 1903.)<sup>5</sup> It apparently was at least interrupted again soon, for McConnell wrote to Señor Valdes on the 28th of July, 1903, that the Costa-Rican government had refused to permit a commissary on its side of the river, and had objected to McConnell's landing laborers at Gadocan.<sup>11</sup>

McConnell used his position in the Camors-McConnell Company and the organization, employees, money and property of that company in many ways in supporting and advancing his new enterprise. The local manager of the Camors-McConnell Company at Bocas, Robert H. Warren, who was under the direction and control of McConnell as president, became McConnell's attorney in fact and representative at Bocas. Mr. Warren used the funds of the Camors-McConnell Company to a very considerable extent in paying the expenses of McConnell's planting and other operations, but the funds were subsequently returned to the company. Mr. Warren devoted a large amount of time daily to McConnell's private interests. He visited the Sixola plantations several times. He sold and leased launches and lighters belonging to Camors-McConnell Company to McConnell, for use in connection with the Sixola plantations. Even the suckers for planting bananas at Sixola were obtained from Camors-McConnell Company's plantations.<sup>12</sup>

First  
Interference  
of Costa Rica.

McConnell's  
use of  
Camors-  
McConnell  
Company in  
his private  
enterprise.

<sup>8</sup> Letter, Warren to McConnell, July 8th, 1903, page J.

<sup>9</sup> Letter, F. J. Alvarado & Co., April 23d, 1903, page C.

<sup>10</sup> Page 192.      <sup>11</sup> Letter to Señor Valdes, July 28th, 1903, page L.

<sup>12</sup> Testimony of Warren and Herbert in the injunction suit and letters of R. H. Warren.

McConnell was able to carry on this work without objection in the first instance, because he created or permitted the impression among the employees of the company at Bocas that the new work was for account of the Camors-McConnell Company. Later, when this appeared to be untrue, it created dissension among the employees at Bocas, and caused the resignation of one of the principal ones. He was not interfered with by the other officers of his company because his actions were kept secret from them.<sup>12</sup>

[It is true, however, that Mr. Minor C. Keith, vice-president of the United Fruit Company, became aware of his acts, and repeatedly endeavored to persuade McConnell either to desist or to declare that the new enterprise was to be for account of Camors-McConnell Company. Mr. Keith on several occasions reminded McConnell of his agreement, and called upon him to respect it. Mr. Keith made McConnell "most reasonable propositions to induce me [McConnell] to withdraw from my intentions to plant Sixola, but I declined to entertain them until after I had ascertained definitely whether or not Gadocan could be made a satisfactory port."]<sup>13</sup>

McConnell boldly proceeded. In May and June, 1903, he caused five witnesses to appear before a notary in Bocas and make affidavits, showing that he had planted land along the Sixola River. The exact description of the lands claimed is as follows: "lands that lie on both sides of the river Sixola in the jurisdiction from three miles up from the mouth of said river up to five miles of its course and an equal distance to the depth of the forest on each side of the river, thereby forming on both sides a perfect square."<sup>14</sup> These affidavits, defective and of no possible value, since the laws on which they were supposed to be based were not in force in Panama, constitute the only basis of title to any of the lands or cultivations now claimed by McConnell or the American Banana Company. The cultivations actually made by McConnell extended over twenty-six miles up the said river, and were only from 200 to 1,000 meters in width.<sup>15</sup>

The Romero concession required the concessionaire to file a plan of the proposed railroad with the government of the Department of Panama. McConnell did so, and thereupon on the 9th of September, 1903, the governor of Panama stated that the concession had been given under a mistake of facts, and ordered that it be suspended. The concession authorized a railroad to run from the *right* bank of the Sixola River to Gadocan. From the plans filed, it appeared, however, that Gadocan lay to the *north* of the

Further  
planting on  
the Sixola.

Suspension of  
the Romero  
concession by  
Governor  
Duran.

<sup>12</sup> Letter, McConnell to Warren, June 10th, 1903, page 1.    <sup>14</sup> Pages 14 to 22.    <sup>15</sup> Page 33.

Sixola River, and that the proposed railroad was to run from the *left* bank of the Sixola to Gadocan. As the Sixola River formed the accepted boundary between the jurisdictions of Colombia on the south and of Costa Rica on the north, pending the determination of the permanent boundary between the two nations, the governor of Panama declared that he had had no intention of granting rights in territory that was under the jurisdiction of Costa Rica, and therefore suspended the concession.<sup>16</sup>

In the mean time the same concession had come before the general government of Colombia at Bogotá for approval. The said government passed upon the matter, and declared that the governor of a department had not the power to grant such a privilege, since the power to do so was vested solely in the departmental legislature under the constitution and laws of Colombia. Therefore, the general government of Colombia declared the concession to be void.<sup>17</sup>

McConnell still continued his planting and began to clear a way for his railroad. Upon learning of this, the Costa-Rican government again sent officials in September, 1903, to investigate McConnell's actions within the jurisdiction of Costa Rica, and they required him to desist from further trespassing in Costa-Rican territory.<sup>18</sup>

On September 24, 1903, McConnell wrote to Secretary Hay. He stated that he had bought a railroad concession from a Colombian citizen, that the railway would run through territory awarded to Colombia by President Loubet, but over which Costa Rica still retained jurisdiction until the boundary line should be fixed by a joint commission, and that the government of Panama was unaware of the existence of such an understanding between the Colombian government and Costa Rica when the concession in question was issued and when transferred to McConnell.<sup>19</sup>

(NOTE.—It may be observed, in passing, that McConnell neglected to advise Secretary Hay that the Colombian government had expressly declared his railroad concession to be invalid, and also that his statement that the government of Panama was unaware of the existence of the boundary understanding is directly contrary to the fact shown by Governor Duran himself. Governor Duran suspended the operation of the railroad concession on the sole ground that the line of the railway lay in territory that was under the jurisdiction of Costa Rica, and expressly stated that, if the true location of the railway had been known on the date of the contract, the government would not have entered into the same. McConnell also said that Governor Duran had declined to approve the plans and profile of the proposed railroad, unless subject to Costa

Declaration of the invalidity of the Romero concession by Colombia.

Further interference of Costa Rica.

McConnell writes to Secretary Hay.

<sup>16</sup> Page 11.    <sup>17</sup> Page 10.    <sup>18</sup>

<sup>19</sup> McConnell to Secretary Hay, September 24th, 1903, page 55.

Rica's temporary jurisdiction. This is certainly a very inadequate manner of stating what Governor Duran had actually done; to wit, suspended and really annulled the entire contract.)<sup>19</sup>

McConnell did not in this letter claim the right or title to any land, but stated that the fruit which he had planted in the river land would be lost unless *the port of Gadocan were improved* and the proposed railroad built.<sup>20</sup> It is to be observed and remembered that even the Romero Concession contains no authority whatever to open, use or improve the port of Gadocan, or to erect, maintain or use any of the constructions necessary, and which McConnell contemplated, for that purpose. In other words, the utmost claims of McConnell,—to wit, the right to build a railroad under the railroad concession, and rights in unoccupied land arising from actual cultivation thereon,—did not include the further right which, he states, was essential to his whole enterprise. The importance and necessity of the harbor improvement is clearly set forth and dwelt upon in his letter.<sup>21</sup>

The position of the Costa-Rican government in claiming jurisdiction and in preventing McConnell from surveying, planting, erecting buildings, building the railroad, and improving or using the port without that government's consent, is also clearly stated. Certainly, McConnell never had any misconception as to this government's attitude from the very beginning, and it never did anything more than he had always anticipated and expected.

Upon receipt of this letter the State Department communicated with its representatives, both at Bogota and San José.<sup>22</sup> Minister Merry at the latter place reported that the territory between the Sixola and Gadocan was disputed, and that Costa Rica did not then claim jurisdiction and had not demanded that McConnell's work be stopped under threat of confiscation or otherwise.<sup>23</sup> This statement of facts thus reported through Minister Merry to the State Department was not strictly accurate, since Costa Rica *had* stopped McConnell's work on the north side of Sixola, and *had* claimed and exercised jurisdiction there. However, it is clear that after these communications McConnell was not further interrupted for some time. It is apparent that this quiescence on the part of Costa Rica was really out of deference to the wishes of the United States, coupled possibly with a desire to escape responsibility, but was not in any sense a renunciation of the rights and duties of sovereign jurisdiction.

He continued his operations uninterruptedly for eight months. He claims to have planted 5,000 acres of land with about 500,000 banana

<sup>20</sup> Page 56.      <sup>21</sup> See also page xix.      <sup>22</sup> Page 58.      <sup>23</sup> Page 58.

plants, and to have spent in such work upwards of \$88,000. He claims to have cut and cleared a way for a railroad of about twenty-five miles in length.<sup>24</sup> He actually planted 1,469 hectares, about 3,630 acres, and underbrushed 161 hectares, about 398 acres additional, on the north side of the river.<sup>24a</sup>

#### FORMATION OF THE AMERICAN BANANA COMPANY.

On June 18, 1904, McConnell caused to be formed a corporation under the laws of Alabama, called the American Banana Company, with a capital of \$750,000, for the purpose of engaging generally in the banana business.<sup>25</sup>

He had intended to form such a company from the very beginning, but refrained from doing so temporarily, "on account of Costa Rica's jurisdiction and the consequent difficulty of importing railroad iron, machinery for harbor improvements, etc."<sup>26</sup>

On the 24th of June, 1904, he executed an assignment to the said corporation purporting to transfer to it the Romero concession (which was void), all his titles in the lands claimed by him on the Sixola River (but he had no titles whatever to the said lands), and the cultivations for \$250,000 in stock, reserving, however, the cost of cultivations.<sup>27</sup> Under the reservation he caused the corporation to pay back to him the entire cost and expense that he had incurred, to wit \$65,672.80. He obtained cash subscriptions from others for a very large amount, about \$300,000. He made no actual transfer to the corporation in Panama until the 31st of July, 1905, when, under deed No. 184 before Notary Adolfo Cervera, his attorney executed an instrument purporting to transfer to the American Banana Company for the sum of \$25,000 the following: one banana plantation of 3,000 manzanas \* of land lying on both sides of the Sixola River, from the fourth mile for about twenty-six miles with a depth varying from two hundred meters to one thousand meters, several wooden buildings with zinc roofs, some materials for construction, many thatched huts (in all about forty buildings), ten head of cattle, ten pigs, and several fowls, two gasoline launches, "Sixola" and "Messenger," three wooden lighters, some provisions, stores, and furniture in the said buildings, and some tools, machinery and agricultural implements, five iron cars, and all rights that he had acquired under the laws of Panama to the adjacent lands, and all rights in virtue of the Romero concession.<sup>28</sup>

Agreement  
with the  
American  
Banana Co.

Transfer to  
the American  
Banana Co.

\* A manzana is about  $2\frac{1}{4}$  acres.

<sup>21</sup> Pages 76, 79.      <sup>21a</sup> See copy of map of W. L. Collins, McConnell's engineer, opposite frontispiece.

<sup>22</sup> Charter on page 26.

<sup>23</sup> Letter, McConnell to Otto F. Dolder, September 19th, 1903, page N.

<sup>27</sup> Page 30.      <sup>28</sup> Page 32.

## THE VOYAGE OF THE "ORN."

The "Orn" sails.

The "Oscar G" sails.

The "Orn" arrives at Sixola.

On the 9th of July, 1904, McConnell shipped by the steamer "Orn" from Baltimore 916 tons of steel rails and 26,000 steel ties with appurtenances. On the 5th of August, 1904, he also shipped by the schooner "Oscar G" from Mobile about 50,000 feet of lumber, five flat cars, and some general merchandise and provisions and tools of the value of about \$2,500.<sup>29</sup>

The steamship "Orn" cleared from Baltimore to Bocas del Toro. Upon arriving there, she cleared for Gadocan on July 22, 1904, and probably arrived there the next day.<sup>30</sup>

When the "Orn" arrived at Gadocan, there were present there some customs officials of Costa Rica from the established port of Limon who forbade the ship to unload because Gadocan was not a legal port, and such act would be in violation of the customs laws of Costa Rica. The officials were, however, prevailed upon to wait until the government of Costa Rica in San José could be communicated with, and in the meantime not to prevent the unloading of the cargo. Communication was held with San José on the subject, and the government forbade the entrance of the cargo.<sup>31</sup> During the interval, however, about two-thirds of the goods in tonnage, but three-quarters in value, about \$60,000 worth, had been unloaded. While unloading, one of the lighters was sunk, and McConnell claims that the customs officials went so far in the performance of their duties as to forbid his saving the material sunk with it. The officials of Costa Rica took possession of the part of the cargo which had been landed.<sup>32</sup>

On the 12th of August the "Orn" proceeded to Bocas del Drago, and landed there the remainder of her cargo. The customs officials of Panama imposed the usual import duties on the same, to the amount of \$10,149.90, Colombian currency. In default of payment the goods were seized, and afterwards sold by the same officials.<sup>33</sup>

The schooner "Oscar G" landed her cargo at Bocas del Drago, which suffered the same fate.<sup>34</sup>

<sup>29</sup> Pages 80, 81.    <sup>30</sup> Page 66.

<sup>31</sup> At this very moment negotiations to settle the national boundary were being carried on between the official representatives of Costa Rica and Panatoa at the city of Panama, and the questions raised by the arrival of the "Orn" were seriously involved in that controversy. (See the "Memoria" of the Secretary of State and Foreign Affairs to the National Assembly of Panama, 1906, p. lv.) Up to that time McConnell's acts in planting some unoccupied lands and erecting unimportant huts had not introduced any international complications. His acts of trespass raised simple questions of private right which Costa Rica, out of deference to the wishes of the United States, had refrained from pressing, but without in any way resigning or qualifying its right of jurisdiction. The arrival of the "Orn," however, proposing to land under claim of authority from Panama and to import merchandise for the purpose of constructing a railroad under a Colombian concession, all contrary to Costa Rica's laws, created a very different situation. It was one which Costa Rica could not ignore, since the very omission to act would have constituted a renunciation of jurisdiction. Costa Rica had always firmly maintained that the Loubet Award was void, and had never accepted it in any way. Its representative was insisting upon this same position in the pending negotiations, and it is readily seen that the renunciation of jurisdiction over territory which could only become subject to Panama's jurisdiction through the operation of the Loubet Award, would seriously have compromised Costa Rica's claims. Therefore, that country was compelled to forbid the "Orn" to land, without any regard to the private rights involved or the unofficial wishes of the United States. The reasons for this conclusion can readily be understood after a study of the history of the boundary controversy explained on page xx. The propriety of Costa Rica's action was shown by the action of Panama in disclaiming jurisdiction over the land north of the Sixola. (Resolution No. 28, August 2nd, 1904, page 95, *infra*. See also page 158.)

<sup>32</sup> Page 80.    <sup>33</sup> Pages 33, 235.    <sup>34</sup> Page 81.

## SECOND APPEAL TO THE STATE DEPARTMENT

McConnell thereupon again appealed to the State Department, and further official correspondence ensued. This brought a clear statement of Costa Rica's position and of McConnell's acts in a letter from Hon. José Astua Aguilar, Secretary of Foreign Relations, dated September 21, 1904. The Minister stated that the land north of the Sixola was under Costa-Rican jurisdiction, and that no one could obtain any right, title, or interest in the said lands except through title derived from Costa Rica; that McConnell, without any right, had taken possession of a large area of land, cut down trees, planted cultivations, constructed a tramway, and violated the customs laws. Costa Rica had sent, not soldiers as McConnell had misrepresented to the State Department, but customs officials from the nearest established port, to enforce the customs laws and to put an end to the acts of usurpation.<sup>35</sup>

Costa Rica's  
position  
officially  
defined.

In the meantime McConnell visited Panama, and after a month of patient effort failed completely in obtaining either of the two objects sought by him: first, the recognition of the Romero concession; second, a communication of remonstrance from the government of Panama to Costa Rica.<sup>36</sup> On the first point the government of Panama absolutely declined to recognize the Romero Concession as valid. (Resolution, 14th of September, 1904).<sup>37</sup> On the second, the government declined to demand a cessation of interference on the part of Costa Rica in McConnell's works, giving as one reason the fact that the question of boundaries was even then being discussed between the representatives of the two nations. (Resolution of Foreign Relations, dated September 22, 1904).<sup>38</sup> Incidentally, McConnell did all in his power to prevent the representatives of Costa Rica and Panama, then in Panama, from agreeing to a settlement of the boundary question.<sup>39</sup>

McConnell in  
Panama.

Minister Merry advised McConnell to apply to Costa Rica for permission to continue his work. For this purpose he and Adolf Dolder, after leaving Panama, visited San José and were pleasantly received by the government officials, to whom he was presented by Minister Merry, even though these same officials knew that McConnell had just been urging action at Panama prejudicial to Costa Rica. He was, however, unsuccessful. (Despatches of Minister Merry, dated October 9th and 15th, 1904).<sup>40</sup>

McConnell in  
San José.

<sup>35</sup> Page 63.    <sup>36</sup> Page 67.    <sup>37</sup> Page 12.    <sup>38</sup> Page 14.    <sup>39</sup> Page 286.    <sup>40</sup> Pages 65, 67.

THE CIRCUIT COURT OF THE UNITED STATES ENJOINS McCONNELL  
FROM DOING ANY BANANA BUSINESS.

On the 30th of November, 1904, Camors-McConnell Company brought an action against McConnell in the Circuit Court of the United States for the Southern District of Alabama. The object of the suit was to compel McConnell to respect his agreement which he made when the said corporation was formed. After a prolonged and bitter contest the court granted an injunction forbidding McConnell to be an officer or manager of the American Banana Company or to engage in the business of growing, buying or selling bananas. In rendering its decision, the court significantly said:—

“ ‘If there is one thing more than another which is essential to the trade and commerce of this country, it is the inviolability of contracts deliberately entered into; and to allow a person of mature age, and not imposed upon, to enter into a contract, to obtain the benefit of it, and then to repudiate it and the obligation which he has undertaken is *prima facie*, at all events, contrary to the interest of any and every country.’ ”<sup>41</sup>

The Court thereupon (31st August, 1905) granted a preliminary injunction against McConnell, which was affirmed on appeal, by the United States Circuit Court of Appeals for the Fifth District (30th October, 1905).<sup>42</sup> The case was then tried upon its merits, testimony was taken, and the injunction made permanent on the 9th day of June, 1906. The Court decreed that

“ *Herbert L. McConnell be and he is hereby perpetually restrained and enjoined from being an officer of the American Banana Company, and from managing, directing, or controlling its affairs, and otherwise from directly or indirectly, either individually or by or through a corporation, engaging in the growing of tropical fruit in competition with the complainant*” (Camors-McConnell Company), “*or in the importing or selling of tropical fruit anywhere in the United States in competition with the complainant,*” etc., etc.<sup>43</sup>

McCONNELL'S FIRST MEMORIAL TO THE STATE DEPARTMENT.<sup>44</sup>

On the 21st day of December, 1904, McConnell filed a petition with the State Department at Washington. In it he claimed that he had obtained full title in the lands planted by him under Law 61 of 1874 and Law

<sup>41</sup> Copy of opinion on p. 36. 140 Federal Reporter, 412.

<sup>42</sup> Page 43. 140 Federal Reporter, 987.      <sup>43</sup> See pages 52, 53, 54.      <sup>44</sup> Page 71.

48 of 1882 of the Republic of Colombia, and stated that these laws had been adopted by the Republic of Panama. This *may* have been one of the errors of his counsel, since McConnell *must* have known, from his long experience in Bocas del Toro and vicinity, that which was and is currently known there by all, to wit, that no titles of any kind could be obtained to any public or unoccupied lands there. All the lands in the state (afterwards the department) of Panama had been withdrawn from denouncement for many years, on account of the land grant ceded to the French canal companies, and for other public reasons arising from the proposed construction of an interoceanic canal, and the very law cited by McConnell (Law 61 of 1874 to which Law 48 of 1882 is merely supplementary), was in 1881 expressly suspended from having any operation in Panama.<sup>45</sup>

McConnell discussed at some length the boundary controversy between Colombia and Costa Rica, and expressed the wholly erroneous view of the real facts and of the true relations between the two nations that he has steadfastly, and to his great cost, maintained to the present time. This boundary controversy will be explained further on.<sup>46</sup>

As to the railway, he claimed the legal right to build a private railroad over his land without any concession from any government, and abandoned any further claim under the Romero concession.<sup>47</sup> In this connection it is important to observe that the lands planted by him, and which alone he could claim on any pretext whatever, were distant at least three miles from the port of Gadoan, and by limiting his claim to build the railroad as stated in his memorial, he abandoned the right to connect it with the port of Gadoan. As a matter of fact, the only work he actually did upon the railroad was at Gadoan, extending from the coast inland and it did not lie upon or extend to any portion of the lands described in the affidavits of possession as mentioned above, or to any of those planted by him.<sup>48</sup>

McConnell stated, "It was not until long after I had entered upon these lands, and had expended large sums of money in planting, that I had any intimation whatsoever that either government contended that there was any dispute over the boundary line between the two republics which would in any way affect the land that I was occupying." Previously in his memorial McConnell had stated that it was in April, 1903, that he had first entered upon the lands.<sup>49</sup>

In making the statement quoted, McConnell evidently forgot what he had written in the letter from Bocas to T. D. Nettles dated the 23rd of April, 1903, from which the following is an extract:—

McConnell  
abandons the  
Romero  
concession.

McConnell's  
statements not  
accurate.

<sup>45</sup> Chapter 9, page 273, especially Decree No. 92 of 1881, page 276; this decree is still in force, page 285.

<sup>46</sup> Page xx.      <sup>47</sup> Page 75.      <sup>48</sup> See map frontispiece.      <sup>49</sup> Pages 78, 74.

"I have not yet arranged to do any planting, but have spent much time since my arrival here in exploring different sections of this country and have finally determined that Sixola River is the proper place to plant, provided control can be secured and it is found that a port close by can be made a safe harbor. Several parties besides myself are making an effort to secure the land and port, and it remains to be seen who will be successful. It was until some two and a half years ago disputed territory, when the President of France as arbitrator decided in favor of Colombia and against Costa Rica. On account of the revolution in this country a joint commission has never been appointed to survey and fix the exact line. The territory is therefore still under Costa-Rican jurisdiction, and that country sent soldiers a few days since and stopped my work of securing the land, according to Colombian laws. Temporary arrangements were, however, made with the commanding officer for a continuance of the work, but, as that was contrary to his orders, the work is likely to be stopped again at any time.

"In addition to the complications named the C. R. government some years ago granted this land to an American in consideration of military services rendered. I expect to leave for Panama on this business Saturday, and may be there a week or two, but expect to return here before going to New York."<sup>50</sup>

McConnell also failed to remember his statements in his letter to Hon. John Hay, dated 24th September, 1903, in which he reiterated substantially the foregoing statements, and also said:—

"Costa Rica has on several occasions interrupted temporarily my work of surveying and planting, and refused to allow a commissary built on the north bank of the Sixola River or within the limits of its temporary jurisdiction, and I am forced to ship all supplies over the river bar, which is rough and dangerous both to life and property. Any shipments handled through Gadoan would be subject to confiscation, hence under such circumstances it is impossible to do anything towards the improvement of the port and the building of the railroad. The Colombian Government is, of course, responsible to me under the concession for any losses inflicted by the Costa-Rican Government, but I of course desire to work harmoniously with that Government. Furthermore, the payment for goods confiscated would not secure the end desired; namely, that of building the road and opening the port for vessels."<sup>51</sup>

It is clear that McConnell planted on the north side of Sixola River with the *fullest knowledge* of the jurisdiction of Costa Rica there.

It is to be noticed that McConnell failed to advise the State Department,

<sup>50</sup> Full copy of this letter on page A.

<sup>51</sup> Full copy of this letter on page 55.

either that his concession had been declared void by the central government of Colombia or that it had been suspended by Governor Duran.

For the acts of Costa Rica in interfering with his work, he demanded \$2,210,000 damages, although he claimed to have spent in the enterprise only \$198,200. He asked the United States Government to demand from both Costa Rica and Panama the release of the property seized, and that the memorialists, McConnell and the American Banana Company, should be permitted "to pursue the work of planting, cultivating, and developing the territory in question, including the completion of said tram or railway, the raising of the sunken materials, and the landing of those delayed, and of such others as may be necessary and appropriate at Gadoan, and in all respects continue the work of development and improvement upon which they have entered, free of and from any molestation whatsoever by said governments or either of them."<sup>52</sup>

Damages  
claimed against  
Costa Rica.

It is to be observed that in characteristic fashion he wanted the United States government to demand for him from the two nations *more* and *greater* rights than he had ever claimed.

In his memorial he also stated that on the 18th of June, 1904, the American Banana Company was organized, and through it a large number of other American citizens became interested with him in the enterprise. As already stated, it was on the 24th day of June, 1904, that McConnell executed an assignment of his lands, concessions, and plantations to the said corporation. His statement in the memorial is to be remembered when considering the representations which McConnell presented to the government of Costa Rica in which he claimed to be the sole planter and possessor of the said plantations. The purpose of his making and continuing in this false statement in Costa Rica will be understood when we come to consider the litigation that has taken place there.<sup>52a</sup>

As a result of McConnell's memorial, Minister Hay requested Minister Merry at San José to arrange a *modus vivendi* which would have the effect of saving McConnell and the American Banana Company from unnecessary and voidable losses.<sup>53</sup>

As a result of this request, extended communications took place between McConnell and the government of Costa Rica in which all the incidents of McConnell's entrance into Costa Rica and the actions of the Costa-Rican officials relative thereto were fully explained.<sup>54</sup> Passing comment may also be made upon McConnell's communication to the Secretary of State Department of Foreign Affairs, dated April 3rd, 1905, in which he says: "I should also state that in those uncultivated regions I saw no indications

Negotiations  
with Costa  
Rica for a  
*modus*  
*vivendi*.

<sup>52</sup> Page 83.      <sup>52a</sup> Page xviii.      <sup>53</sup> Page 85.      <sup>54</sup> Pages 85 to 131.

whatever that the Government of Costa Rica was not in accord with the interpretation of the decision as understood in the neighboring Republic as well as other countries. Furthermore, the Government of Costa Rica did not advise me as to its attitude respecting those lands until my agricultural works had attained a great development.”<sup>55</sup> This also is hardly consistent with his oft-forgotten letter to Mr. Nettles, dated April 23, 1903, in which he carefully explained that the land *was* under the jurisdiction of Costa Rica, that that government had *actually* exercised its jurisdiction by stopping such work, and that the same thing was *liable to occur again*. Although the foregoing inconsistency was not known in Costa Rica, the answer of Minister José Astua Aguilar to the same letter, under date of April 12th, 1904, is especially worthy of consideration. In it Minister Astua carefully and satisfactorily explains all of Costa Rica’s acts and position. This is conclusive, and no further answer of any kind is necessary.<sup>56</sup>

To the same effect is the statement of the same Minister Aguilar in his letter to Minister Merry, dated 3rd March, 1906, in which he states: “That the territory of Gandoca and the Sixaola river from the very bank of this river and of the Yurquin have been and are now subject to the sovereignty of Costa Rica, that Mr. H. L. McConnell has attempted without title, in virtue of his own will alone, by means of an occupancy which our laws and universal right qualify as the act of an usurper, to appropriate as lord and master a great area of that region; that the same gentleman imported merchandise clandestinely by the unopened port of Gandoca, for which he chartered ships which he caused to arrive at that point; that my government, in the exercise of the national sovereignty and under the necessity of inculcating respect for its laws, acted through the fiscal authorities to proceed against that unlawful action and smuggling, and notified Mr. McConnell that he could not possess or make use of the lands mentioned, since he had not acquired them in accordance with our laws.”<sup>57</sup>

The course of the negotiations is fully set out in the documents printed later, from which three main points are firmly established:—

1st. That the State Department and the United States representatives, especially Minister Merry, exerted unusual efforts to procure benefits for McConnell.

2nd. That the government of Costa Rica most sincerely endeavored to meet the wishes of our government, notwithstanding the many reasons influencing them to be offended with McConnell’s acts, and

<sup>55</sup> Page 91.

<sup>56</sup> Page 93.

<sup>57</sup> Page 154, also pages 64, 160, 173.

3rd. That the negotiations were unsuccessful solely because of the excessive demands and unreasonable attitude of McConnell himself.

The truth of the first statement is shown by the most casual examination of the communications that passed between the State Department and Minister Merry. In fact, the latter became so zealous in behalf of McConnell's interest that Mr. Loomis, as acting secretary, found it necessary to write Minister Merry that he should "avoid giving to the Costa Rican government the erroneous impression that the Department is in any way committed in support of Mr. McConnell's claims, its attitude in fact being simply favorable to the preservation by means of a *modus vivendi* of whatever property he may have." (Letter dated Washington, May 12th, 1905.)<sup>58</sup>

Proof of the same is further shown in Mr. Merry's letter of June 11, 1905, in which he says, "It seems proper for the writer to state that no effort has been spared to obtain for Mr. McConnell a *modus vivendi*."<sup>59</sup>

In substantiating the second and third points, reference may especially be made to Mr. Merry's letter dated March 7, 1906, in which he advises Mr. Root that "Mr. McConnell was about reaching a *modus vivendi* which I had been instructed by the Honorable Secretary of State, Mr. Hay, to aid him in obtaining, when, over night, he decided to insist on the right to place an additional area under cultivation, thus changing the *modus vivendi* for a *modus crescendi*, and therein I cannot justly find fault with the Minister for declining. It was not, in fact, a claim in accordance with my instructions or with the intent of Mr. Hay." And also to the statement at the close of the letter of Mr. Aguilar to Minister Merry, dated 3rd March, 1906.<sup>60</sup>

Failure to  
obtain *modus*  
*vivendi*.

#### McCONNELL'S SECOND MEMORIAL TO THE STATE DEPARTMENT.<sup>61</sup>

Failing in his attempts to obtain a *modus vivendi*, McConnell filed a second memorial with the State Department on the 22nd of October, 1905. As a result, Secretary Root cabled to Minister Merry on the 27th January, 1906, in effect questioning the sovereignty of Costa Rica over the territory in dispute. In answer to which the above-mentioned letters of Minister Merry, dated 7th March, 1906, and of Minister Aguilar, dated 3rd March, 1906, were sent.<sup>62</sup>

<sup>58</sup> Page 107.    <sup>59</sup> Page 129.    <sup>60</sup> Pages 154, 161.    <sup>61</sup> Page 132.

Emphatic  
declarations  
by Secretary  
Root in favor  
of McConnell.

On the 19th of March, 1906, Secretary Root sent a further cable to the United States representative at San José and Panama, stating that an American citizen, meaning McConnell, and the American Banana Company claimed title to a valid location under the laws of Colombia, and that it would be deemed a violation of the rights of the American possessors of such property to interfere with their possession and enjoyment except upon the judgment of a court.<sup>62</sup>

This was followed by a letter in which Secretary Root went as far as possible in maintaining the rights claimed by McConnell, and setting forth distinctly the principle that in Secretary Root's opinion the jurisdiction of Costa Rica in the said territory was temporary and precarious, and that the title to property rights were determinable according to the laws of Colombia and Panama, and in effect demanding that the property of McConnell and the American Banana Company should be protected and preserved without any destruction, until such time as the ultimate rights of the parties should be passed upon by a court of competent jurisdiction.<sup>63</sup>

Answers of  
Costa Rica  
and Panama  
denying  
Secretary  
Root's  
position.

The governments of both Costa Rica and Panama answered this communication and denied the conclusions of Secretary Root as to the character of Costa Rica's jurisdiction in unmistakable terms. Panama stated that it conceded to Costa Rica the right to exercise complete jurisdiction (see telegrams of Governor Magoon, dated April 27 and May 2, 1906).<sup>64</sup>

Costa Rica stated in the letter of Minister Luis Anderson, dated May 26, 1906, "Our right, therefore, to govern and dispose as sovereigns of the land that we are possessors of, as long as the boundary question is in abeyance, is, therefore, a point which is not doubted either by Colombia formerly or by Panama at the present moment. And the complete sovereignty of both countries over that which each of them is occupying now up to the time of the definitive demarcation comprises without limit—both governments have understood it thus—all the attributes making up sovereignty."<sup>65</sup>

#### THE ASTUA DENOUNCEMENTS.

In the mean time, as had been suggested in the above-mentioned correspondence, the title to a large area (5,850 hectares, 5,915 square meters, excluding 2 per cent. for roads), including all of the very lands on which McConnell's cultivations north of the Sixaola River lay, was claimed by other American citizens. They had acquired the rights under a denunciation made in conformity with the laws of Costa Rica by a citizen of Costa

<sup>62</sup> Page 163.      <sup>63</sup> Page 163.      <sup>64</sup> Page 166.

<sup>65</sup> Pages 170, 175. See also the officially inspired note of Señor Alfaro, page 248.

Rica, on the 1st of March, 1900 (prior to the date of the Loubet award on the 11th September, 1900). A certificate showing this fact was issued by Secretary Carillo of the Court of *Contencioso Administrativo*, dated 4th February, 1905.<sup>66</sup>

Then followed extensive litigation in the courts of Costa Rica respecting the validity of these denouncements. McConnell appeared in the courts by his duly constituted attorney,<sup>66a</sup> and filed an objection to them. His objection was passed upon and dismissed by the Supreme Court of Justice of Costa Rica on the 15th of October, 1905.<sup>67</sup>

Legal procedure relating to the denouncements.

In this decision the claims and position of McConnell were fully considered and decided, the court finding as follows:—

“And whereas the objection raised by Mr. Herbert Lee McConnell lacks all foundations because the said gentleman is not a party entitled to appear under any form whatsoever in the present denouncement, since he neither alleges any right of ownership to the tract involved nor even the right which he might possess as an earlier denouncer of the same land, limiting himself to alleged rights of an improving possessor, and to making sundry allegations concerning the invalidity of the denouncement and the non-denounceability of the tracts comprised therein;

McConnell opposes, but is defeated.

“And whereas the fact that the opponent has made improvements on national property does not give him any rights to demand that his possession be respected, as long as he has not shown that he had complied with the formalities indicated in section 530 of the Fiscal Code.”<sup>68</sup>

On the 26th of January, 1906, the Court of *Contencioso Administrativo* rehearsed the denouncement proceedings, and ordered the Executive to execute a deed conveying a title to the land covered by the denouncement to the Northern Railway Company, a corporation organized under the laws of New Jersey, and legally domiciled in Costa Rica. (It is to be noted that the said railway company is substantial, as it owns and operates all of the railways in Costa Rica except a small detached portion on the Pacific side.)<sup>69</sup>

On the 22nd February, 1906, McConnell, through his same attorney, Ricardo Jiménez, Esq., filed an objection to the last said judgment, but notwithstanding this, on the 14th March, 1906, the government of Costa Rica executed a deed granting to the Northern Railway Company all of the lands covered by the denouncement mentioned. This deed contains an accurate description of the land, and rehearses all of the legal steps leading up to its authorization and execution.<sup>70</sup>

Deed granted to the Northern Railway Co.

On the 23rd of April, 1906, the Court of *Contencioso Administrativo*

<sup>66</sup> Page 187.      <sup>66a</sup> Copy of McConnell's power of attorney to Ricardo Jiménez, page 190.  
<sup>67</sup> Pages 190 to 121.      <sup>68</sup> Page 193.      <sup>69</sup> Page 197.      <sup>70</sup> Pages 200, 202.

decreed that the possession of the lands adjudicated to the Northern Railway should be given to it.<sup>71</sup>

On the 26th of April, 1906, McConnell, through his attorney Ricardo Jiménez, protested against the last-mentioned decision, and petitioned the court that it order McConnell's improvements to be appraised by experts.<sup>72</sup>

On the 16th of May, 1906, the Supreme Court revoked the decision of the lower court so far as it decreed material possession to the Northern Railway Company of the lands upon which McConnell claimed cultivations, for the reason that it was necessary first to settle the question of the improvements and the right of retaining possession claimed by McConnell.<sup>73</sup>

On the 27th of July, 1906, McConnell, through his same attorney, petitioned the Court of *Contencioso Administrativo* that the judge himself should visit McConnell's plantations to see their existence and extent, and that the "experts estimate most carefully the plantations, buildings, and other improvements."<sup>74</sup>

Subsequently McConnell withdrew from further participation in the proceedings, stating that he had already transferred his title to the land in dispute, and therefore had no interest in the litigation.<sup>75</sup> It will be remembered that he had assigned all his rights and interests in the Sixola lands to the American Banana Company on June 24th, 1904,<sup>76</sup> which was long before his appearance in the litigation in Costa Rica. He took part in that litigation in his own name, claiming to have the rights of possession accruing from cultivation,<sup>77</sup> and the greater part of the litigation was relative to his alleged rights of possession as cultivator.<sup>78</sup> When he failed to prevent the acquisition of the lands cultivated, by virtue of a superior title, he announced that he had transferred his interest,—a statement directly contrary, when the date of the transfer is remembered, to the representations he had made as the only basis of being admitted to the litigation. The American Banana Company never was domiciled in Costa Rica,<sup>79</sup> as is necessary under the laws of that country before a foreign corporation can have any legal standing.

On the 3rd of December, 1906, the Supreme Court took cognizance of McConnell's withdrawal, and then granted the Northern Railway Company the right to take possession of all the land covered by the Astua denunciation, and on the 5th day of December, 1906, under order of the Court of *Contencioso Administrativo* the governor of Limón sent officers with the representatives of the Northern Railway Company, and they formally took possession of all the lands on which McConnell's cultivations stand on the north side of the Sixola River, in the name of the Northern Railway Company.<sup>79</sup>

<sup>71</sup> Page 211.      <sup>72</sup> Pages 212, 214.      <sup>73</sup> Page 217.      <sup>74</sup> Page 219.      <sup>75</sup> Page 221.      <sup>76</sup> Page 214.  
<sup>77</sup> Pages 194, 197, 201, 219, 221.      <sup>78</sup> Page 157.      <sup>79</sup> Pages 223 to 225.

Withdrawal of  
McConnell.

Possession  
granted to the  
Northern  
Railway  
Company.

## THE PORT OF GADOCAN.

The cultivations of McConnell are inaccessible except by the Sixola river or through Gadocan, and thence overland for several miles. The river is not available to take out bananas because of a bar at its mouth which renders navigation impossible for large vessels, and so dangerous and uncertain as to be practically impossible even for the smallest boats. The only possible way open for McConnell was that which he chose, namely, to make a port at Gadocan and to build a railroad from there to the plantations. Gadocan is on the open sea, and, though favored by a freak which has left open a narrow passage through the bar, it is doubtful whether any permanent or safe port could be made there. Skilled engineers and others more familiar with the conditions and waters there have declared the plan of making a port at Godocan to be utterly impracticable and unsafe. (All of the foregoing facts are clearly shown by the letters to and from McConnell.)<sup>80</sup>

Besides, it is elementary that the right to make a harbor, and to place constructions in the sea, requires the consent of the government having jurisdiction. McConnell and the American Banana Company never had and do not claim any such consent whatever. There is nothing about making a port or harbor in the Romero concession, and McConnell never received any other authority of any kind from either Panama or Colombia. He never received any authority at all from Costa Rica, under whose jurisdiction Gadocan actually lies.<sup>81</sup>

It is even more elementary that a *port* cannot be opened for exporting or importing, or for receiving vessels, without governmental authority, and proper provision for governmental machinery incident to a legal port of entry. But neither government ever suggested or assented that a port might be opened at Gadocan.<sup>81</sup>

Regarding a railroad, the only right McConnell ever claimed for himself or the American Banana Company was by virtue of the Romero concession, which was utterly void and of no effect. McConnell himself acknowledged the latter fact, and thereupon claimed that he proposed and had the right to build a private tramway on his own land.<sup>47</sup> But his cultivations and all the land ever claimed by him lay at least several miles away from Gadocan, and he never had or claimed any right whatever to the land between. Besides, the only place where he made any actual preparations for building a railway was at Gadocan and on the land of others between that place and

<sup>80</sup> Chapter 1. Also letter to Secretary Hay, September 24th, 1903, page 55.

<sup>81</sup> Pages 64, 94, 154, 173.

his plantations. That part was essential to his plans, for without it any railways within the lines of his cultivations would have been without connection with the sea and valueless. McConnell was not permitted to land railroad material at Gadocan, because that was not an open port, and it was contrary to the customs laws of Costa Rica, and therefore illegal to do so.<sup>81</sup> It is clear that he could not have built a private tramway on the land of another without the owner's permission, nor a public one without governmental authority.

This was really the bottom cause of his trouble, and he surely can blame no one but himself for having planted bananas which were only available for commerce through Gadocan and a connecting railroad, without first having gained the opening of the port, and the right to make the necessary improvements thereof, as well as the right to build the railroad.

#### AN ACCOUNT OF THE BOUNDARY CONTROVERSY.\*

The controversy over the true boundary between Costa Rica and its next neighbor to the east and south (New Granada, the United States of Colombia, the Republic of Colombia, and finally the Republic of Panama) has played a conspicuous part in the history of those nations. A short explanation of the controversy will enable its present bearing on the affairs and transactions now being considered to be better understood.

The controversy had an early origin. It was officially recognized in 1576 when King Philip II. of Spain wrote a communication on the subject to the Audiencia of Guatemala, to whose jurisdiction the two administrative districts of Costa Rica and Veragua were subject. The king directed the Audiencia to ascertain to which district the Rio de Guaymi, the Bahia del Almirante, and the Bocas del Drago belonged, stating in his letter that these three were the same and formed the true boundary between those districts. There were no sufficient maps in those days, and the king relied chiefly for his information on the letters and accounts of discoverers, who were more concerned with the gold supplies than with the accuracy of their geographical descriptions. The Rio de Guaymi was surely the same river that bears that name at the present day. It flows into the Chiriquí Lagoon, a part of the two broad sheets of water or bays which were then known as Bahia del Almirante. Between these bays and the ocean are a number of islands, and the waters or straits between these islands were generally known as the Bocas del Drago (the Mouths of the Dragon). A glance at the accompanying map will show that, while the Guaymi River might have formed an accurate boundary line, the Bahia del Almirante

Origin prior to  
1576.

\* See the explanatory map at the end.

and the Bocas del Drago, extending many miles in width, could not have done so. Then, too, the king was wrong, because the true boundary at that time was really the westerly limit of the Ducado de Veragua, which of all the ancient boundaries is the one most nearly capable of definite ascertainment. Even this line is somewhat indefinite because it is described as twenty-five *leguas* from the mouth of the river Belen to the western part of the bay of Ceravaro (Almirante), and beyond if necessary, to make up the full twenty-five *leguas*. The distance mentioned passes the western shore line of the principal portion of the former bay of Ceravaro which is now Chiriquí Lagoon, but does not reach the western shore line of the present bay of Almirante.

Unfortunately, the Audiencia of Guatemala failed to solve this uncertainty, or, if it did so, its decision is lost. Consequently, the same uncertainty, with varying differences, has existed down to the present day. The former administrative district of Costa Rica has been ultimately succeeded by the republic of the same name, and the district of Veragua by the Republic of Panama.

In a treaty executed between the Republic of Central America and the Republic of Colombia, 15th May, 1825 (Bogota), this uncertainty was recognized, and the powers interested agreed to respect their limits as they then were until such time as the true boundary should be settled. This was the origin of the *status quo*. But even this line of the *status quo* never was definitely fixed, either by the treaties or otherwise, and the limits of the temporary jurisdiction remained subject to conflicting opinions of the adjoining nations, until by mutual consent gradually formed it has of recent years been accepted that the line of the *status quo* on the Atlantic side is the Sixola River, extending inland at least as far as the mouth of the Yurquin, and on the Pacific side Punta Burica.<sup>82</sup>

The discussion of the boundary has had a varied course. In 1856, June 11th, at San José was signed a provisional treaty known as the Calvo-Herrán treaty. This described a proposed boundary running north and north-west from Punta Burica to the source of the Doraces River, thence by the course of the same to the sea. The river intended was described by the legislature of New Granada, in adopting a conditional ratification of the treaty, to be the present Sixola.<sup>83</sup> It is safe to say, however, after considering the maps and geographical information then available, that the course of the principal stream of the Doraces or Sixola River, running as it does far to the westward from its mouth, was not then known, and that to follow the course of the branch Yurquin would have fulfilled the intention of New Granada at this time.

Gual-Molina  
treaty of 1825,  
and origin of  
the *Status Quo*.

Calvo-Herrán  
treaty of 1856.

<sup>82</sup> A full explanation of the *status quo* is found in the "notes" of Señor Alfaro beginning on page 248, especially from page 254 on, and in the letter of Minister Anderson on page 170. Official historical precedents to the same effect are found on pages 264 to 272. Also page 238. See page xxvi.

<sup>83</sup> See pages 255 and 256.

This treaty, however, was not ratified by Costa Rica, and never took effect. Costa Rica did not agree with the aforesaid location of the Doraces, claiming that it coincided instead with the present Changuinola. It is to be observed, however, that this line, solemnly fixed by the representatives of both powers, should coincide with the line subsequently agreed for the *status quo*, if we accept the location of the Doraces claimed by New Granada.

Important evidence is furnished by Felipe Perez, who published in 1862, at Bogotá, a geography of the State of Panama, under the order of the general government of the United States of Colombia. He described the boundary as following the course of the Dorados, Doraces, or Culebras (now the Sixola), and as ending either in the river Golfito or at Punta Burica, acknowledging a dispute as to the proper point of ending on the Pacific side.<sup>84</sup> The most significant part of this testimony, however, is the description of the course of the Dorados (Sixola) River in a *southerly* direction, thus confirming the impression that that river was supposed to run *south* and not *west* from its mouth.<sup>84a</sup>

*Castro-  
Valenzuela  
treaty of 1865.*

Another official attempt was made to fix the boundary in 1865, March 30th, by the Republic of Costa Rica and the United States of Colombia. Then, too, the representatives of both powers, after very long and exhaustive studies and negotiations, signed another provisional treaty. The line described in this treaty diverged most significantly from the former one. It started at Punta Burica, ran to the head-waters of the Chiriquí Viejo, thence easterly over the crests of the mountain ranges forming the watershed between the waters flowing into the Atlantic and Pacific Oceans respectively, passing over the peaks Picacho, Horqueta, Playita, Hornito, to Santiago, thence in a straight line northerly to the source of the river Cañaveral, and thence by the course of that river to its mouth.

This line corresponds very closely to the one claimed by Costa Rica in the arbitration proceedings before President Loubet.

The treaty of 1865, after being signed by the president and passed for ratification by the senate of New Granada, Colombia, was finally rejected by the house of representatives in 1866, after one favorable vote in 1865.

*Arbitration  
treaty of 1880.*

All attempts of the interested powers to agree upon the true boundary having failed, the next attempt was to leave the matter to arbitration. A treaty was concluded at San José on December 25th, 1880, in which it was agreed to "fix a line which shall divide for all time and perfectly clearly the territory of" the two countries, "each one remaining in the full, un-

<sup>84</sup> To the same effect is the map of Colombia of 1824 mentioned on page 255.

<sup>84a</sup> The map of Manuel Ponce de Leon and Manuel María Paz (Bogotá, 1864) shows the Dorados or Culebras river as running almost due north and south.

disturbed, and peaceful possession, as far as they are concerned between themselves, of all the territory which said line leaves on their respective sides." It was also provided that the arbitrator's decision "will at once be considered as a perfect, obligatory, and irrevocable treaty of binding force between the two high contracting parties, which formally and expressly renounce every claim of every kind against the decision of the arbitrator, and bind themselves to respect and fulfil it promptly, faithfully, and for all time, pledging therefor the honor of the nation."

By an additional convention dated January 20th, 1886, the former treaty was supplemented, among other things, in the following manner: Upon the insistence of the United States government that the limits of the territorial dispute should be fixed, article 2 of the supplementary convention provided:—

Additional  
Convention  
of 1886.

"The territorial boundary which the Republic of Costa Rica claims on the side of the Atlantic reaches as far as the island Escudo de Veragua and the Chiriquí (Calobebora) river inclusive, and on the side of the Pacific as far as the Chiriquí Viejo, inclusive, to the East of Punta Burica.

"The territorial boundary claimed by the United States of Colombia reaches on the side of the Atlantic as far as the Cape Gracias a Dios inclusive, and on the side of the Pacific, as far as the mouth of the Golfito River in the Golfo Dulce."

It was further provided in article 3 that "the arbitral award shall be confined to the disputed territory which lies between the extreme boundaries above described."

One of the original arbitrators named was King Alfonso XII. of Spain, but in 1885, after having accepted orally the position of arbitrator thus inaugurating the arbitration, he died. After some unimportant difficulties with regard to an arbitrator, the interested powers executed a further convention dated November 4th, 1896, appointing the president of France as arbitrator, and thereupon the respective claims were duly submitted to President Loubet accordingly.

Additional  
convention  
of 1896.

The claims of Costa Rica were presented by Ambassador Manuel M. de Peralta, with most profound studies and exhaustive information. Costa Rica claimed exactly the following boundary, to wit, from Escudo de Veragua, southward to the mouth of Rio de Chiriquí, thence following up to its source in Cerro Santiago, thence along the watershed mountain range over Cerro del Hornito, Cumbre de la Playita, and Cerro de la Horqueta to the eastern principal source of Rio de Chiriquí Viejo, thence following the course of the same river down to its mouth in the Pacific Ocean, east of Punta Burica.

Claim of  
Costa Rica.

Claim of  
Colombia

The boundary claimed by Colombia was exactly as follows: From the mouth of Rio Golfito in Golfo Dulce along a meridian which, crossing Rio Coto flowing into the Pacific Ocean and the rivers Lari and Coen, tributaries of the Tiliri or Sigsaula (Sixola), flowing into the Atlantic, intersects the Tiliri at  $9^{\circ} 33'$  north latitude, and  $85^{\circ} 31' 30''$  western longitude from Paris ( $83^{\circ} 11' 16''$  western longitude from Greenwich), and thence in a straight line to the mouth of Rio Saratiqui, where it flows into the Rio San Juan at  $10^{\circ} 43'$  northern latitude, and  $86^{\circ} 15'$  western longitude of Paris ( $83^{\circ} 53' 46''$  western longitude from Greenwich).

President  
Loubet's  
Award, Sept.  
11th, 1900.

On September 11th, 1900, President Loubet announced his decision. He made the following finding: "The frontier between the Republics of Colombia and Costa Rica shall be formed by the spur of the mountain range which starts from Punta Mona on the Atlantic Ocean and encloses on the north the valley of the Tarire or Sixola River, and thence by the ridge of the mountain range which divides the waters between the Atlantic and the Pacific oceans as far as the 9th degree of latitude, approximately. It shall then follow the dividing ridge between the Chiriquí Viejo and the tributaries of the Golfo Dulce to Punta Burica on the Pacific Ocean."

Costa Rica's  
interpretation  
of President  
Loubet's  
Award.

This award had the great disadvantage of not being definite. Immediately Ambassador Peralta wrote to Minister Delcassé, asking more exact data and suggesting that his (Peralta's) interpretation of the boundary line was as follows: "The frontier between the Republic of Colombia and that of Costa Rica shall be formed by the spur of the mountain range which starts from Cape Mona, on the Atlantic Ocean, and encloses, on the north, the valley of the Tarire River (or Sixola River) near the mouth of this river; it shall follow in west-south-westerly direction on the left bank of this river, up to the confluence of Yurquin or Zhorquin River (also called Sixola, Culebras or Dorados) toward the meridian 82 degrees 50 minutes West of Greenwich, 85 degrees 10 minutes West of Paris, and 9 degrees 33 minutes latitude north. There the frontier line shall cut the Tarire thalweg (riverbed), on the left bank of the Yurquin, and shall follow in a southerly direction, the mountain chain dividing the waters between the basins of the Yurquin to the east and of the Uren to the west; then by way of the range dividing the waters between the Atlantic and the Pacific as far as about the ninth degree latitude; then it shall follow the line dividing the waters of the Chiriquí Viejo from those of the affluents of the Golfo Dulce, to terminate at the Punta Burica. The Punta Mona is situated under the meridian  $82^{\circ} 39'$  west of Greenwich ( $84^{\circ} 59'$  west of Paris) and  $9^{\circ} 39'$  latitude north. The Punta Burica is situated under the

meridian  $82^{\circ} 53'$  west of Greenwich ( $85^{\circ} 15'$  west of Paris) and  $8^{\circ} 2'$  latitude north. The intersection of the boundary line with the ninth parallel is at about  $82^{\circ} 45'$  west longitude of Greenwich ( $85^{\circ} 5'$  west of Paris)."

Minister Delcassé's reply was neither definite nor satisfactory. He stated that in the absence of exact geographical data the arbitrator had been able to fix the frontier by general indications only, that there would be difficulty in fixing the frontier on the map, and that it was left to the friendly spirit and good understanding of the two powers to fix the same on the ground. But all attempts to do so heretofore have failed, and the award has never been regarded as effective by either nation.<sup>85</sup>

The Loubet award was never entitled to be called an award at all, and was wholly null and void from the beginning for two reasons: first, because the description of the supposed boundary line was so vague and indefinite that the award was incapable of execution without further agreement of the two powers; second, because the award included a large area not claimed by Colombia and not within the limits prescribed by the treaty itself.

President  
Loubet's  
award void.

The latest attempt to reconcile their differences, which Mr. McConnell endeavored to frustrate, resulted in the execution of another provisional treaty. This was signed at Panama on the 6th of March, 1905, and is known as the Guardia-Pacheco treaty. It provides for a line which runs as follows:—

Guardia-  
Pacheco  
treaty of 1905

"A line which starting from Point Mona on the Atlantic ocean shall run in a S. W. direction until it strikes the Sixola river, below Cuabre. From this point the dividing line will run along the left bank of said Sixola river to its confluence with the Yurquin or Zhorquin river. Here the boundary will cross the bed of the Tarire or Sixola river to the left bank of the Yurquin and will thence follow in a southerly direction the water shed first between the heads of the Yurquin on the east and the Uren on the west, and then between those of the latter and those of the Tararia river until it reaches the crest of the great mountain chain which divides the waters of the Atlantic from those of the Pacific ocean. Thence the line will run in a E. S. E. direction along the said crest to a point named Cerro Pando which marks the beginning of the divide between the waters of Coto de Terraba and Chiriquí Viejo rivers. From there the boundary will continue along the crest of the Santa Clara mountains following the divide between the waters of the Coto de Terraba and Esquinas rivers on the west, and that of the Chiriquí Viejo and Coto del Golfo rivers on the east, until it reaches the head of the Golfito river following the course of this latter to its mouth in the Golfo Dulce which mouth is called

<sup>85</sup> For Costa Rica, see letter of Minister Anderson, page 170; and for Panama, see note of Señor Alfaro, pages 248 and 250.

Golfito. From this last point to Puntarenitas an imaginary straight line drawn shall divide the waters of the Golfo Dulce."

Ratification  
of Panama.

McConnell's  
agitation in  
Panama in  
1906.

This provisional treaty has been ratified by the national assembly of Panama, and will shortly come before the legislature of Costa Rica for similar ratification. It is likely that the treaty would also have been ratified without question in Costa Rica if it had not been for the agitation instituted by McConnell in Panama in the autumn of 1906. McConnell attempted to persuade the legislators of Panama that the Loubet award had gone into effect, and that Panama had the right to the jurisdiction of the territory between the Sixola River and Punta Mona. He proposed that the legislature should pass a resolution directing the executive of Panama to take possession of this district and to exercise jurisdiction there.<sup>86</sup> He also published open letters in the newspapers of Panama advocating such action.<sup>87</sup> The government of Panama opposed McConnell's memorial and caused to be published a reply by Señor Alfaro.<sup>88</sup> Notwithstanding this, however, at a meeting of the legislature, on the 13th of November, 1906, when the president and other influential members of the government were absent from the city of Panama, McConnell procured a committee of the legislature to make a report in favor of his proposed action,<sup>89</sup> and the legislature enacted a resolution directing the executive to exercise jurisdiction in the territory described. This sudden action, without proper consideration, created a sensation in Panama, and incurred the active opposition of the government. Shortly afterwards the national assembly revoked that resolution, and passed another declining to act as McConnell had proposed.<sup>90</sup>

The agitation in Panama was followed with close attention at San José, and it unquestionably aroused a greater interest in the boundary controversy than would otherwise have been anticipated at this time. The action of the legislature of Panama, even though it was afterwards revoked, was contrary to the historical precedents, and created an unfavorable impression in Costa Rica.

The Status  
Quo.

During all of this controversy as to the location of the true and final boundary between the countries interested, there has existed the agreement and understanding that each country should continue to exercise jurisdiction up to the line actually occupied respectively in 1825.<sup>91</sup>

The exact location of their occupation at that time, commonly referred to as the line of the *status quo*, has been uncertain because the localities in question were wild lands and not inhabited except to a small extent

<sup>86</sup> Page 226.      <sup>87</sup> Page 244.      <sup>88</sup> Page 248.      <sup>89</sup> Page 258.      <sup>90</sup> Page 263.  
<sup>91</sup> Gual-Molina Treaty of 1825, page xxi.

on the Pacific side. But recently the *status quo* has been accurately fixed so far as concerns the vicinity of the Atlantic Ocean, and is the river Sixola, at least up to the mouth of the Yurquin. This is established for Colombia by the official report of the minister of foreign affairs, Señor Marco F. Suarez, to the national assembly of Colombia, submitted in 1894,<sup>92</sup> and for Panama by the communication of Señor Alfaro and the authorities cited by him.<sup>93</sup> On the side of Costa Rica, the same is admitted in the official correspondence, copies of which may be found in chapter 6, and especially in the communication of Minister José Astua Aguilar, dated 3rd March, 1906.<sup>94</sup>

The course of the line from the mouth of the Yurquin, following the stream of that river or the watersheds in a general southerly direction, is fairly well established, but has never been an important consideration, since the territory is inhabited only by a few Indians. In the vicinity of the Pacific Ocean there is greater uncertainty. Punta Burica was formerly regarded as the limit of the respective jurisdictions,<sup>95</sup> but Colombian citizens have undoubtedly occupied territory between there and Rio Golfito, and of recent years it appears that Costa Rica has not disturbed the government of Colombia up to that river.<sup>96</sup>

The distinction is always to be borne in mind that the line of the *status quo* is merely one of convenience, and that the true and final boundary is to be determined by the royal grants, and not by the actual occupation of the two countries. This was the position taken by the representatives of both powers in the arbitration proceedings, and is historically correct. Therefore, if either country is found in actual occupation of territory which should belong to the other as of right, this fact should not influence the determination of the final boundary. But it can readily be seen that settlements actually made in an otherwise unoccupied territory create conditions which have some practical effect. Such occupation and settlement by the citizens of one nation make a very real, though perhaps not a legal reason, for suffering the jurisdiction of that nation to continue, and render equally difficult the assertion of rights of jurisdiction by another nation. It is surely difficult to transfer a settled community to the jurisdiction of some other nation than that whence it emanated, and which it has always recognized as sovereign. Therefore actual occupation and settlement are bound to command consideration and allowance, especially in the case of a controversy which has existed so long a time, and where the dis-

<sup>92</sup> Page 264.    <sup>93</sup> Page 258.

<sup>94</sup> Page 158, 160. In the accompanying map the line of the *status quo* follows H. Pittier.

<sup>95</sup> Report of Minister Suarez above referred to, page 265.

puted area is so vast. So, too, the actual settlements necessarily affect the limits of temporary jurisdiction, and to this is doubtless due the gradual alteration, if it has been altered, of the line of jurisdiction on the Pacific side.

These considerations were paramount in influencing the conduct of Costa Rica when McConnell proposed to land the steamship "Orn" and to proceed to build a railroad, open a port, and make settlements under reputed Colombian authority. To have permitted McConnell to do this would not only have subjected Costa Rica to the possibility of losing additional territory, in the same manner as had actually occurred on the Pacific side, but would surely have prejudiced its case in the whole boundary controversy. It is seen how important it was to Costa Rica to forbid the landing of the "Orn," and how justifiable that action was.

(NOTE.—A further account of the early history of this controversy will be found in the interesting and learned article by Professor Edward Seler, Ph.D., reprinted on p. 323 within.)

#### COMPETITION AT BOCAS.

There always has been a large number of planters at and near Bocas del Toro, who produced bananas and were ready to sell them to the best buyer. Any one could buy them. Joseph Di Giorgio began in 1903 to send ships there and bought large numbers. A period of competition ensued in which Camors-McConnell Company took an active part. They and the United Fruit Company paid such high prices for the fruit of the individual planters that Di Giorgio, being compelled to pay similar prices, found the trade no longer profitable. McConnell thereupon bought his banana plant. This is the only instance known where a banana merchant was forced away from Bocas by competition, in which the United Fruit Company was interested, and McConnell did it.<sup>89</sup>

Since then a disease has attacked the bananas on the Chiriquí lagoon, and has destroyed practically all the supplies available from Bocas, except some grown and owned by the United Fruit Company, and by Camors-McConnell Company.

It is true that no one can buy any bananas at Bocas now, but this result is caused by the disease and not by any operations intended to prevent competition or produce a monopoly.

<sup>89</sup> Letter of T. D. Nettles dated August 1st, 1903, with enclosure, page V, and letter of McConnell dated August 3d, 1903, page X.

As to other points in Central America as well as Jamaica and Cuba, any one can buy large quantities of bananas there. And this is proved by the fact that such is actually the case, and such bananas are bought and are brought to the United States and sold here by persons and corporations who have no association whatever with the United Fruit Company, and are its active competitors. The United Fruit Company enjoys no monopoly of the banana trade. In the year ending September 30th, 1906, it imported into the United States only 19,352,310 bunches of bananas, while others imported at least 17,376,897. In the year ending September 30th, 1905, the United Company imported 19,929,433 bunches, while others imported at least 13,409,709 bunches.



## CHAPTER I.

Containing copies of a few important letters.\*

MOBILE, ALA.      CABLE ADDRESS: "McCONNELL,"—LIMON.      BOCAS DEL TORO.  
CAMORS-McCONNELL COMPANY.  
GROWERS—EXPORTERS  
BANANAS.

BOCAS DEL TORO, REP. COL., 4-23, 1903.

MR. T. D. NETTLES, Mobile, Ala.:

*Dear Mr. Nettles,—*While the weather has continued extremely dry until yesterday morning and last night, when there was a great downpour of rain, the planters seem to have turned out better than usual to cut fruit this week, and it now appears that the "Gaines" will have a cargo of something like 20,000 bu. Beckmann has no steamer loading, which fact accounts in small part for the "Gaines'" large cargo. Fruit will doubtless be more plentiful next week, and, if the "Morgan" is back in time to load with the "Fulton," she ought to get a fair cargo.

There seems to be but little change in the situation in reference to the opposition line, except that the "Fulton" got quite a fair cargo last week. That seemed to be due to the fact that Beckmann made the rounds, and told all the planters that, unless they gave that ship a full load, Digiorgio's boats would be withdrawn, and the price would drop to 55 cents. He also reported in some sections that our orders for fruit were for the United Co. Those reports had some influence, as we had on one occasion sent out notices for that purpose, then, too, one of that Co.'s launches delivered a part of our notices. It remains to be seen whether such talk had more than temporary effect. Beckmann is paying 70 cents against our \$1.00, but his more liberal selection about equalizes prices. All of our fruit is now costing \$1.00 with the exception of that from Robalo and our own plantations. It would be a good idea to suggest to Mr. Ellis the advisability to have some one approach Digiorgio with a proposition to take his plant off his hands, but above everything see to it that Victor Camors has no finger in the pie. His work here was very expen-

\* See also letter to Secretary Hay, September 24th, 1903, page 55.

B

sive and absolutely worthless. In fact, I am confident that he did our interests real harm. I have not yet arranged to do any planting, but have spent much time since my arrival here in exploring different sections of this country, and have finally determined that Sixola River is the proper place to plant, provided control can be secured, and it is found that a port close by can be made a safe harbor. Several parties besides myself are making an effort to secure the land and port, and it remains to be seen who will be successful. It was until some two and a half years ago disputed territory, when the President of France as arbitrator decided in favor of Colombia and against Costa Rica. On account of the revolution in this country a joint commission has never been appointed to survey and fix the exact line. The territory is therefore still under Costa-Rican jurisdiction, and that country sent soldiers a few days since, and stopped my work of securing the land according to Colombian laws. Temporary arrangements were, however, made with the commanding officer for a continuance of the work, but, as that was contrary to his orders, the work is likely to be stopped again at any time. In addition to the complications named, the C. R. government some years ago granted this land to an American in consideration of military services rendered. I expect to leave for Panama on this business Saturday, and may be there a week or two, but expect to return here before going to New York. Mr. Warren has made a draft on me on this account for some \$395.00. Please open a special account in my books on that account. Mr. W. will draw again in a few days for some five or six hundred dollars on this account, and later for other sums as they are needed. If you run short of funds, borrow of the bank. You might discontinue paying at once grocery bills on which no discount is offered. It may be that I will need several thousand dollars while at Panama in order to secure the land. In that event, should you not be able to get as much as I need of the Trust Co., write J. W. or R. McConnell, B'gham, for any additional amount that you may need to make it up. Say nothing about this matter, as I have reason to believe that the United Co. is responsible for the C. R. government's action in stopping my work.

Mr. Flynn is taking hold as cashier, and will, we think, prove a good man. Herbert will handle the books, and he will, I hope, have the December accounts ready in ten days or two weeks. Herbert was glad to get the lumber, even at the high prices, and you will, I hope, succeed in shipping the balance by the "Gaines" next trip.

I enclose a letter from Cratty Bros. & J., and would thank you to write

## C

them that the matter will have my attention on my return. I also enclose statement and check from McC. & C. Please file the statement and use the check.

The Central Trust Co. statements sent me make fine showings. I thank you for them. I am also obliged for the suit of clothes. I am sending in care of Capt. Jullum a package of silks which Mrs. Dehls wishes you to express as per the address on the second wrapper. Charge the expense to K. B. & Co.

It would be well to buy pots or other vessels for fumigating purposes for both the steamers, in order to avoid the necessity for stopping at the Fort on outward trips.

Please send Mr. Warren an additional \$2,000.00 in \$500.00 N.Y. checks. He will advise you in future when more is wanted.

I have requested Mr. W. to send you by the "Morgan" about 200 Limes, six doz. Pines, and eight bu. Plantains. After supplying yourself liberally, divide the balance with Miss —, Joe, William, and Mrs. —. If the Pines hold out, you might hand a few to Miss —, also send a few to the Stationery Co. for Miss —.

Yours truly,

H. L. McCONNELL.

APRIL 23rd, 1903.

MESSRS. F. J. ALVARADO & Co.,  
Port Limon, C.R.:

*Dear Sir,—* I beg to enlist your good services in the following matter:—

I wish to cultivate certain lands that lay north of the Sixola River, extending on the ocean front to or beyond a point called Gadocan (or Goddocan or Cadocan) some two or three miles North of the river, and on the river for some miles up. I understand that this section covers a portion of territory that was ceded to the Republic of Colombia under a decision in arbitration rendered by the President of France, and that the decision is binding on the two Governments, but that actual possession does not pass to Colombia until a joint commission shall survey and establish the line. Pending this survey, I understand Costa Rica retains possession as far as the North bank of Sixola River.

If there is nothing to prevent you acting for me, I will thank you to take this matter up with the Government of Costa Rica, and secure a per-

D

mit for me to go ahead and cultivate such quantity of land as I may find available, from the Sixola River along the ocean front as far as Gadocan or thereabouts, and running along the North bank of Sixola River as far as I may desire to cultivate.

If you find it necessary to employ an attorney, I suggest that he *be not identified* with the banana interests of Costa Rica, and it would be well for you to ascertain that fact before securing his services.

I understand that General Herbert C. Jeffries, who was employed by the Costa-Rican Government as an army officer a few years ago, received a land concession of 20,000 hectares from the Government in recognition of his valiant services, and that he has located his concession on the Sixola River, on a portion of the soil I propose to cultivate. Will you please ascertain *if this concession was made*, and if the title to same passed to General Jeffries, and if he still holds the concession, and whether or not this title will hold against the claims of a *bona fide* cultivator of the land, so granted? Also, whether or not such a concession, which included the site for a port, would prevent me taking possession of and improving such port?

In securing the permit for me to cultivate the land, please include permission for me to *select* and *improve* a *port* convenient to said land and build the necessary railway to deliver the products of the land to the port.

In the event the Government feels that it has not the authority to give permits over the territory under discussion, it certainly could issue the necessary permission with a *proviso* that it should be *subject to the Colombian laws*, if such laws conflict therewith.

We expect to *make use of Gadocan* as a port.

I understand that in Costa Rica the mode of securing lands along water-courses and ocean front is different from the ordinary way. Your attorney will probably be able to explain the matter quite fully, which explanation I will be glad to have, together with information as to whether or not the same rule applies to navigable streams as ocean front, and a definition as to what constitutes a "navigable stream." My understanding is that the *title* to lands along navigable streams and ocean front, for a certain distance back or inland, remains in the Government, but that the land may be cultivated by tenants who remain in undisturbed possession.

If my presence is required in Limon, I will be glad to come if you can secure a permit for me to pass the quarantine authorities. There is really no necessity for quarantine now, as the small-pox has disappeared at this port, and clean bills of health will be issued from this time forward.

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In order that you may act at once, I beg to enclose to you my power of attorney.

Thanking you in anticipation, I am,

Yours very truly,

HERBERT L. McCONNELL.

pp R. K. WARREN.

PANAMA, April 27, '03.

Mr. R. K. WARREN,  
Bocas del Toro:

*Dear Mr. Warren*,—I regret to have to report that Romero has secured the concession to build a road from Goddocon to Sixola. I will, however, make an effort to buy his contract, but as yet have not approached him on the subject.

If you have the opportunity, direct Dolder to make a careful investigation of the railroad route from the north side of Goddocon to the River. We cannot parallel Romero's route within one mile on each side.

It would hardly be advisable to send Jullum to inspect the Port.

Please direct Alvarado to discontinue his efforts.

It is my intention to return on the "Intrepid" next week.

With regards to all, I am,

Yours truly,

H. L. McCONNELL.

L. HEUER & CIA.  
Antes: H. R. Dieterich.

Direccion Telegrafica:  
HEUER.

COLON, R.C., May 19, 1903.

*Dear Mr. Warren*,—Francisco Lopez tells me this morning that he has been appointed Alcalde of Bocas, and that he will arrange with you for the issuance of the permit for planting on Sixola. He, no doubt, wants a few dollars. You will, of course, be governed by your judgment as to what is best to be done. He expects to return to Bocas on the "Intrepid" next week.

I handed my appeal to the Prefect.

Yours truly,

H. L. McCONNELL.

F

T. S. 11.—10,000 May, '02.

PANAMA RAILROAD CO.,  
Panama Railroad S.S. Line.

S.S.....

COLON, 5-19, 1903.

Mr. R. K. WARREN,  
Bocas del Toro,

*Dear Mr. Warren,—*—Mr. Mott tells me that he will be entirely satisfied with \$1,000 gold on account of the Godocan concession. You will therefore please accept his transfer for any interest that he may have in the concession, issue him a draft on me for half of the amount named (five hundred dollars.) and my agreement to pay the remainder when Godocan has proved a satisfactory port in good and bad weather. Mr. Mott will hand you maps and drawings of the port, river, and lands, and render you any further assistance that he can.

Yours truly,

H. L. McCONNELL.

Mr. M. thinks that Parades is still Alcalde.

AGREEMENT TO PAY MOTT FOR THE ROMERO CONCESSION.

WHEREAS Oscar Mott declares that a certain point on the Atlantic Ocean coast, between the point known as "Monkey point" and the mouth of the Sixola River and known as "Godocan" in the civil district of Bocas del Toro, Republic of Colombia, is a safe harbor and good port in good and bad weather for the anchorage of large steamships, and

WHEREAS said Mott has sold to H. L. McConnell all his interest or claims in and to a certain concession or contract between Ricardo Roman Romero and the Government of Colombia, whereby the former is granted the exclusive right to construct and operate a railway from the said port of Godocan to a point on the Sixola River, and

WHEREAS the said McConnell proposes to improve the said port of Godocan, and as a further consideration for the sale of said claims or interest of said Mott in and to the concession or contract aforesaid the said McConnell proposes to pay said Mott the additional sum of Five hundred dollars (\$500.00) United States currency (in addition to the five hundred dollars (\$500.00) purchase price of Mott's interest) if and whenever the said port of Godocan has proven to be a satisfactory and safe port for steamships in good and bad weather,

NOW, THEREFORE, I, Herbert L. McConnell, by my attorney, Robert K. Warren, promise to pay to Oscar Mott the sum of five hundred dollars (\$500.00) United States currency when and on condition that the aforesaid port of "Godocan" proves to be a satisfactory and safe port in good and bad weather, after the completion of the improvements I propose to make.

WHEREAS I; Oscar Mott, did claim an interest in a certain concession or contract entered into between the Government of Colombia and Ricardo Roman Romero, approved by the Governor on the second day of April, 1903, whereby the Government of Colombia ceded and gave to said Romero the exclusive right to build and operate a line of railway to begin at Godocan on the ocean, and extend to a certain point on the Sixola River, in the District of Bocas del Toro, being on the Northerly side of said river, and

WHEREAS Herbert L. McConnell did purchase from said Romero all the right, title and interest of whatever character owned or claimed by said Romero in said concession or contract,

NOW, THEREFORE, I, Oscar Mott, for and in consideration of the sum of five hundred dollars (\$500.00) United States currency to me in hand paid by draft on H. L. McConnell, at Mobile, Ala., the receipt whereof is hereby acknowledged, do hereby give, grant, sell, and convey unto Herbert L. McConnell all my right, title, claim or claims and all interest of whatsoever character in and to the above-named concession or contract between the Government of Colombia and Ricardo Roman Romero as aforesaid.

In witness whereof, I have signed this document, in the town of Bocas del Toro, Republic of Colombia, this 22nd day of May, 1903.

Translated to Spanish—and will be recorded—on stamped paper.

R. K. W.

[Extract from Letter dated June 3rd, 1903.]

Dear Mr. McConnell,—

. . . I sent a lighter load of goods and lumber to Dolder on Friday night, which got in the river, but the sea rose so while they were inside that we could not get the lighter out, and it is yet there. Grenaldo brought the "Esmeralda" out safe, but it was *very rough*. The sea must be absolutely calm before I will risk the "Messen-

ger" over the bar, or another lighter. Am trying to arrange with Dolder to have a lookout at Gadocan at all times to receive important messages. . . . With regards,

Yours truly,

R. K. WARREN.

JUNE 10th, 1903.

Dear Mr. McConnell,—By the "Morgan" I have your esteemed letter of 30th ulto., written at N. Y. The ship is so near loaded at this writing that I cannot answer it as fully as I want to.

Matters in connection with the application to plant are not moving satisfactorily. Parades, who is still *alcalde*, is in with the U. F. Co. gang, and they have made application for *our land*. We will circumvent them with "Grease." The bonds will be attended to, and Dolder will go with the R.R. maps, etc., to Panama. Have just arranged with Valverde to go with him and arrange matters at Colon and Panama. Diplomacy and a little dinner will fix things all right and at little expense. The Costa Rica matter is being attended to by Valverde. He is preparing letter to the Governor to be signed by you.

Will write you fully by Saturday boat.

With regards.

Sincerely yours,

R. K. WARREN.

My exchange rate is maintained at 2.50. Leer won't come in. See his note enclosed.

H. L. McCONNELL, Prest.

T. D. NETTLES, Secty & Treas.

Cable Address: "McConnell"  
CAMORS-McCONNELL CO.

Growers—Importers.

BANANAS.

C. W. BLOCKLEY,  
Mgr. Bocas Division,  
Boca del Toro, South America.

MOBILE, ALA., U.S.A., June 10, 1903.

Mr. R. K. WARREN,  
Bocas del Toro, S.A.:

*Dear Sir,—*

. . . I really do not think that any one will make any determined effort now to disturb us, as the situation is, I feel, secured. Under the railroad concession we can condemn any property through which it is necessary to run, hence you need feel no uneasiness regarding the small piece of property near the beach.

Mr. Kyes reported to Keith, so he (Mr. Keith) told me, that, while the land on the margin of the Sixola is equal to Changuinola land, that farther back is not. It is likely that Mr. Kyes' trip there was simply for the purpose of ascertaining just what was being done and to get definite information regarding the entire situation so as to make a report. Mr. Keith, it seems, deemed it best to treat the matter mildly, but I found the opportunity to name some of our grievances which I did in very plain language. He made most reasonable propositions to induce me to withdraw from my intention to plant in Sixola, but I declined to entertain them until after I had ascertained definitely whether or not Gadocan could be made a satisfactory port. I told him that I would be glad to have him join me in improving the property, but no terms were mentioned, and it is understood that the matter will rest that way until the port has been passed on by an expert engineer. In the meantime I would recommend that you act as though there is no possibility of any rupture taking place between the United and Camors Companies, and try to keep on as good terms as possible with Leer. I took occasion, when talking to Mr. Keith, to mention our difficulties in working with that gentleman, and he will doubtless receive instructions to modify his policy.

Yours truly,

H. L. McCONNELL.

P.S.—When Mr. Dolder goes to Panama, it would be well to have him ascertain whether or not the Government proposes to grant my application for free import duties on commissary supplies, material for building, etc., while the planting is being done. As you will remember, that matter is being looked after by Mr. Valdes.

JUNE 19th, 1903.

*Dear Mr. McConnell,—*

. . . I have just spoken with the alcalde (Parades), and he said he wanted to see me at my room. I told him I was ready at any time. If *greasing* to the extent of four or five hundred silver is wanted, I will yield. If it is for a greater sum, I will submit it to you before agreeing.

Faithfully yours,

R. K. WARREN.

JULY 8TH, 3.

Mr. H. L. McCONNELL,  
Mobile, Ala.:

*My dear Sir,—*—Your esteemed favor of 1st inst. is before me. I am not quite familiar enough with the Geography of Sixola to tell you exactly what lands are claimed by McGonigal, Parades & Co., but it begins some place three or four miles above our camp, and the extent claimed is 5,000 hecktares (can't spell it). This morning Parades came to see me accompanied by Valverde and Outten. Parades asks you to let them have this land without any more trouble and Valverde thinks it well that the matter be arranged this way. The matter is so serious that I promised to refer it to you, as it is beyond the purview of my authority. Parades has already issued an order countermanding the notice to us to vacate and has issued instructions to the Commissariat at Sixola to let us proceed with our work without molestation of any kind. This was evidently preliminary to his call upon me. The proposition is accompanied by another suggestion, as follows: Parades is going to Bogata to have his rights to *his* land and other matters confirmed, ratified and approved by the Congress and Government. He proposes to have *your* rights ratified and confirmed at the same time, both as to your land and the Chiriqui road, provided you allow Dr. Valverde to go with him to Bogata. Valverde wants to go. They were indefinite as to the probable cost of the trip, and I could not get from either of them an idea of the cost. It provides for breakfasts, and I presume other lobbying expenses. Mr.

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Parades said that he would with pleasure issue to Dolder and me a permit for 5,000 odd manzanas each, and this will be included in the above proposed ratification. It seems that under the present law all Panama province lands are open and title to same cannot be secured except by special act or confirmation, by special dispensation, from Bogata. It is probable that no one would be disturbed when cultivating land, but Valverde thinks it quite desirable for you to have government title and for that reason urges you to let him go to Bogata. I cannot say whether or not Valverde's motives are selfish, but he is evidently very much interested in you and your welfare. The question is up to you, and I ask you what you desire me to do in the premises, both as to letting Parades have the land and as to the proposed trip to Bogata. I confess I am at sea on both propositions. My belief is that we have our land secure as well as the land claimed by McGonigal, Parades & Co. Whether or not legal complications may follow is a matter that I cannot foretell. But as Valverde seems anxious about it, now, though he did not seem to have any fear before, it puts me in a quandary. Valverde's reputation is that of a strictly honorable man, both here and Panama, and I cannot believe that he is trying to "milk" us, but it looks "sorter" that way. If such be the case, are we willing to be milked, or shall we stand pat and fight it out? It may possibly be a real necessity to have Bogata ratification, and it might be well to think carefully over it before deciding. Parades is anxious to go, and awaits your answer by the returning "Fort Morgan." I believe you clearly understand the matter as I have put it to you.

I have had nothing from Dolder since my last letter to you. I sent launch to Gaudocan on Sunday with mail and a few laborers. The launch waited 5 hours, and fearing bad weather had to start back without Dolder's answer. I will send again on Sunday.

I note that you hope to secure an engineer through Mr. Clarke. I hope you will succeed in getting a good one, because Mr. Clarke is all right. I have, however, no fear of the result of the investigations of a *good* engineer, if he stays at Gaudocan and studies the case thoroughly.

I have not a line from Goff since I authorized him to proceed. Romero comes with a tale that parties leaving David on June 30 neither saw Goff nor heard anything of the proposed work on the road. If this could be true, I presume Goff is getting his men, animals, tools, and supplies together preparatory to the work, and therefore is not visible.

The collections for May, Rio Biarra, were \$28.00  
" " " June, Chiriqui " 93.00

Romero *says* there were no collections in May on Chiriqui. I paid Romero 49 per cent. of the *net*. I find another road comes out near Langey Bros., and have asked them to act as our agents there. Pretty near as much stock comes out there as at Rio Biarra. Have not Rio Biarra for June yet. James Smith at Crickamola will not do. Old "Uncle George" promises to find some one who will make collections at this difficult place. Romero superseded Kinkaid at Chiriqui, and took it up himself. I will get him "adjusted" in a month or two as well as the others. I believe this road is going to be a good thing.

*July 9th*,—Sleeping over the propositions made by Parades, I am forced to the conclusion that they are not for our good. The sudden flop of Valverde, while he may think it a master stroke of diplomacy, looks to me a little dubious. If the quantity of ground was not so large, I would be in favor of letting them have it, for the sake of peace and diplomacy, but that land embraces some of our best territory, as I understand it, and I believe it worth fighting for. I presume they would produce, in a lawsuit, a permit that would antedate ours, though we firmly believe that ours was filed first, and that our work had progressed considerably before they thought of filing an application to cultivate. These people, however, swear in all kinds of directions when it suits their purposes, and there is no telling where we would land in a legal action.

The securing of confirmatory or ratifying action by the Columbian congress is to my mind purely problematical, and would depend on the caprice of the members of that body. On the whole, it might be better to save our ammunition for later requirements. No matter what way you think of the matter, please write me a separate letter that I may show the Alcalde and Valverde, giving your decision.

I regret that I am unable to save you the trouble and annoyance of these vexatious questions and verbose correspondence, but the exigencies seem to require it.

Sincerely yours,

(Sd) R. K. WARREN.

JULY 28, 1903.

Señor RAMON M. VALDES,  
Panama, Colombia:

*Dear Sir*,—Mr. Warren has sent me an English translation of your letter of the 13th instant, addressed to Dr. Valverde at Bocas del Toro, together

with a copy of his (Mr. Warren's) letter to you of the 18th instant. I note from your letter that "there is an understanding by which Colombia will not exercise jurisdiction on the left margin of the Sixaola River, nor will the Republic of Costa Rica exercise jurisdiction on the right side or margin of said river until such time as the boundary shall have been marked out in conformity with the decision of the Arbitrator that decided the boundary question." I note further that Dr. Guerra, Secretary of Finance, called attention to the fact that the contract between the Government and Romero provides that the tramway be placed on the right and not on the left side of the river. You will, however, please call his attention to the fact that that contract provides that the tramway connect Gadocan with the right bank of the river, and that, since Gadocan is on the left side of the river, it would be a physical impossibility to comply with the terms of that contract without connecting the left as well as the right bank with the port of Gadocan.

It is, therefore, perfectly clear that the word "right" instead of "left" was used in the original contract through error. I appreciate Dr. Guerra's kindness in correcting that error when the transfer was made to me, and would, if I could do so consistently, be glad to comply with his suggestion that a further agreement be entered into to the effect that I would not hold the Colombian government responsible for any interference in my operations upon the part of the Costa Rica government. As Dr. Guerra will readily understand, I cannot afford to waive my rights to Colombia's protection, since, should I do so, I would be left wholly without protection, as I have no contract with the Costa Rica government, hence could expect no protection from that source. I must, therefore, ask that you urge that the tramway plans, as submitted, be approved.

I have been informed that the Costa Rica government has refused to permit my agent to build a commissary on the left margin of the river, and that that government objects to the landing of my laborers at Gadocan. All such interference retards my work, and makes it more expensive. I have engaged, at a heavy expense, an expert engineer, who is to leave for Bocas and Gadocan in a few days for the purpose of planning the port improvements, after which it is my intention to push that work, the tramway and other improvements, rapidly. I trust, therefore, that you can induce the Governor or Secretary of Finance to make such representations to the national government at Bogota that will lead to the prompt appointment of a joint Colombia and Costa Rica commission to fix the boundary line. That, it appears to me, is the practical solution of the

difficulty. If the Governor does not care to address the national government at Bogota regarding this matter, would thank you to do so.

Kindly write Mr. Warren at Bocas del Toro regarding this matter, as well as myself here.

Please present my compliments to Dr. Guerra, expressing to him my appreciation for the many courtesies extended to me during my recent visit to Panama, and with kind regards to yourself, I am,

Yours respectfully,

H. L. McCONNELL.

[Enclosed in Letter to Mr. R. K. Warren, Sept. 19, 1903.]

SEPT. 19, 1903.

Mr. O. F. DOLDER,

Bocas del Toro, S.A.:

Dear Sir,—On my return to Mobile last Tuesday, the 15th inst., I found your letter of the 1st. I note from that letter your statement that I accepted your proposition that the Sixola undertaking be handled on a similar basis to that of the Rio Biarra plantation. I think, however, that you are somewhat in error. When you made that suggestion I replied, if I remember correctly, that I intended to interest both you and Mr. Warren in the enterprise, but did not go into details as to how, explaining to you that it would be impossible to do so then on account of my inability to furnish the entire capital to carry out our plans. It never was my intention, and I thought you understood that, to interest you in the same way as you are interested in Rio Biarra, but it was then, and is now, my desire that you and Mr. Warren both be interested in the entire business; that is, not simply in the growing of the fruit, but in the growing, shipping, and sale,—in other words, that you be interested in the business in its entirety.

It is still impossible for me to say just what arrangement can be made with the parties who may furnish the capital. However, while I did not explain to either you or Mr. Warren, it is my intention to try to arrange for stock for you both without cost to you. That basis of arrangement is certainly the best that could be done for you, as the parties who must furnish something like \$500,000 cash to carry out our plans would certainly not entertain the idea of allowing you 49% to be paid for in profits, and you must certainly realize that.

I hope that the arrangement that I suggest will be satisfactory to you,

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and that you will advise me promptly as to how much stock in a \$500,000 company you feel should be provided for you in the way suggested, also as to salary. Of course, I cannot guarantee that your ideas will be met, but would like to know what they are, so that I may have them before me for guidance.

I must say that the tone of your letter is disappointing to me, and I feel that it is uncalled for, as it has been my intention, and still is, to be liberal with you in this matter. I appreciate the fact that you have done hard and valuable work, but at the same time you must not forget that all the financial risk has been and is yet for my account.

When in New York, I discussed this matter with Mr. Keith, and suggested that his company become interested in the undertaking, but he argues against its being carried out, and finally requested that I wait until he received Mr. Peroutet's report regarding the uncultivated lands and general situation in Changuinola. As I found that Mr. Keith would not ~~at~~ that time agree to join me unless possibly he might, had I forced the issue, on account of Costa Rica's jurisdiction over the territory and the consequent difficulty of importing railroad iron, machinery for harbor improvements, etc., I concluded that it would be better to defer the organization of the company temporarily. In the mean time I will make an effort, through the State Department at Washington and other sources, to overcome that difficulty, and, while that is being done, will myself supply the money to carry on the planting and other work that you are now doing, and at the same time arrange for a dredge, other machinery and tools wanted for the port work, also for railroad material.

I presume that you are investigating the rock situation, and trust that I will soon have your report as to that with sample requested by Col. Wrotnowski. Please investigate, too, and report whether or not there is Manwood timber convenient for making ties, also whether you can find convenient to the proposed railroad line laurel, nisferro, or other hard wood suitable for caissons and piling for the breakwaters and lagoon work.

I presume that Mr. Collins is pushing the work of surveying and platting the river and railroad route.

Before leaving Bocas, I suggested that you send your orders to Mobile for provisions which you are now using in considerable quantities, and would be glad you would do that, as it is necessary for us to economize as much as possible in this work.

I greatly hope that you have entirely regained your health, and that you will have no further attacks of fever.

Yours truly,

H. L. McCONNELL.

LIMON, 9th October, 1903.

FELIPE J. ALVARADO &amp; Co.

San José, Limon, Puntarenas, Costa Rica.

Mr. H. L. McCONNELL,

Mobile:

*Dear Sir,—*We beg to answer your letter of the 24th of last month to inform you that we have put your case before the Government, and their answer is that it is very premature to decide anything regarding the territory in question, therefore they decline to consider it for the present.

Our Government has sent a lawyer with full powers to Bogota to decide that question, and we think that it will finally be settled before the end of the present month.

We would advise you to wait until the end of the month, when we will know something definite and then will inform you.

We are very sorry that our efforts have not been more successful, but it has not been our fault.

Yours very truly,

FELIPE J. ALVARADO &amp; Co.

[*Extract from Letter to H. L. M., dated Bocas, October 13, 1903.*]

I do not know what to say of Parades. He is much put out at your refusal to give him a contract to plant. Of course you know that he is not "for" us, never was and never will be, as long as the United Co. is against us, no matter what we have done or will do for him. I am of opinion we would have his double-faced powers, if he has any, against us on any issue between us and the United. I believe that money or presents bestowed upon him is absolutely wasted. Of course we cannot force him to do right, but we can fight him if he does very wrong. When the question of Ogilvie going across our pickets was up the other day, he promised Dolder to give him (Dolder) an order stopping Ogilvie. When Dolder went to get the order, Parades told him that he had already given the order to the Comisario at Sixola, and the order, on investigation, proved to be *practically* permission for Ogilvie to continue and did not stop him in the least. The United Co. owns this Alcalde. With all this before me, I still think it would be well for us to placate this person in some manner. He would fail on any contract he undertook, and, if we gave him land to plant, he could not plant it unless we gave him the money. He still claims that his "titles" are coming from Bogota soon. I think it

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might be well to give him a little money now and then, the whole not to exceed \$400 to \$500 silver, spread over several months and dependent on good behavior towards us.

I declare I am at sea on this Alcalde proposition. He is a hard or dangerous man to fight from our standpoint, and too dishonest and unscrupulous to pay to be honest and do right.

With regards, I am

Yours truly,

R. K. WARREN, *Mgr.*

OCTOBER 19, 1903.

MESSRS. F. J. ALVARADO & Co.,

Port Limon, Costa Rica:

Gentlemen,—Your valued favor of the 9th inst. has been received. I fear that my letter to you was not as clear as it might have been. What I desired was that in case Costa Rica could not be induced under her temporary jurisdiction to recognize my concession issued by the Colombian Government that you would ascertain the best arrangements that could be made with Costa Rica for importing machinery, railroad rails, etc., through Bocas del Toro or Limon for making the improvements contemplated by the concession and for doing the work. In other words, if Costa Rica will not recognize the Colombian concession, I desire to know whether any special arrangements can be made as per above, and, if the Government will not do this, whether or not there is any law prohibiting such improvements as contemplated, provided they are treated as private properties and not special concessions, also whether the supplies could be landed at Gadoan from the same ship in which they were imported through Limon without the necessity of transhipping from that place.

I note that you think that the boundary question will be decided before the end of the present month, but my impression was that after the appointment by the two Governments of a joint commission it would be necessary to survey the line, which would require some months at least. If you find that by the close of the month the question has not been adjusted as expected, I would greatly thank you, if not too much trouble, to again present the matter to the Government, and ascertain just what my legal rights are or what special arrangements, if any, can be made under Costa Rica's jurisdiction, advising me the result.

Yours truly,

H. L. McCONNELL.

Oct. 21st, 1903.

MR. H. L. McCONNELL:

*My dear Mr. McConnell,*—I beg now to enclose to you letter of Dr. Valdez, dated September 26th, together with letter of Julio Guerra, dated September 10th, and press copy of the “resolution” of the Panama Government in its feeble attempt to annul our Godocan Railway concession, all of which have the English translation attached, and of which I retain copies.

I also enclose the original of Mr. Valdez’ letter of October 4th, which was omitted when I sent you the copy of the translation by the “Fort Gaines.”

The above letters and copy of the “resolution” of the Panama Government were received by me on Saturday, the 18th inst., through Dr. Valverde, who found them in the post-office here, after his return from Panama and Colon. Of course the letter should have been delivered to me long before, as I send to the post-office on the arrival of every vessel coming into port, but it was held for Valverde.

This new correspondence adds very little to the knowledge you already had of the situation, but the copy of the “*Resolution*” and the *humiliating confession of Dr. Valdez*, it seems to me, would be good reading for the Washington authorities, if you have thought it wise and proper to use the United States in securing your rights. Valdez’ letter expresses more clearly the conditions in this country than any argument by attorneys or others before the State Department could portray. It is the cry of justice against the arbitrary acts of a rotten military despotism, for the country is not really a Republic. I yet believe that the quickest and most effective manner of dealing with the situation is through the United States Government.

I have just received from Mr. Dolder and Mr. Collins the enclosed correspondence. The sea has been so high since the day before the “Morgan” sailed (14th) that it has been impossible to get into Sixola. The sea looked like going down on Sunday, and at night I sent the “Esmeralda” and “Amelia” down with a tow of three lighters. A heavy storm caught them, and two of the lighters were so badly damaged by bumping in the heavy sea that they nearly sank. The “Esmeralda’s” tow rope broke off the bar and wrapped around the propeller, and Grenaldo had to dive down in the heavy sea for over an hour to untangle it. Meanwhile the engine broke down and pieces of the stern and bow were torn away. The “Amelia,” being heavier, fared better, and her engine did not stop. The bar was so dreadful that no boat could go over it, and the “Amelia” towed

back the lighter and "Esmeralda to" Bocas. The sea is still rough, but I hope to get in on Sunday night, if possible. I have nine lighters in the succor service, and am using all the launches at available moments to hurry the Sixola matters through. If the weather had held good, I could have had six or eight more loads in Sixola by this time. I fear we began this work too late, however, but, if the "Esther" comes, I will send the "Esmeralda" with a fleet to Gaudocan, and let her await opportunity of getting over the bar, and put the "Esther" on her run up Rio Biarra. I have ample lighters at Rio Biarra now for succors, but will send two more after the "Gaines" gets away Friday. Four or five of my lighters are unfit for succor carriers, and I am really short of lighters for this purpose, under the pressing circumstances. Please take careful note of Dolder's remarks about Mr. Keith's reported position. I believe there is something in these reports, because of the very satisfied air of our German point friends (?).

I regret exceedingly to have to send to you the troublesome mail that is enclosed herewith, but you are the only one able to cope with the situation as it stands now, and I wish you most signal success in handling the matters which your attorney at this end *has* to turn over to you.

With much regard, I am

Sincerely yours,

R. K. WARREN.

[Extract from Letter of Oct. 23, 1903.]

Dear Mr. McConnell,—

\* \* \* I regret that Alvarado failed to secure any definite action by Costa Rica.

I will take every precaution in getting the goods sent by the "Gaines" to Sixola without danger. The sea is calm to-day, and they will go to-night when I get a good lighter for them. I will try to get them in free of duty.

You feel about the lawyers and others here just as I do, but *we are here*, and the only way to deal with them is to be as deceitful as they are, and try to hoodwink them just as they do us. In other words, "fight the devil with fire." I suggested the letter to Valverde on these grounds.

I will be glad to receive copies of Mr. Peyrouzet's report. There is no doubt but that the United is going to *try* to get all the Sixola lands it can.

I fear, dear Mr. McConnell, that I am very unlucky in matters in which

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I am personally interested financially, and I believe that I carry bad luck to those with whom I am interested. I was born to be a servant and not an independent man. I can do fairly well for others: for myself there is always failure. In view of these thoughts I hereby renounce any and all pecuniary interest in Sixola which you kindly intended to set aside for me, and beg you not to think of giving me any interest whatever in that enterprise. When the time comes, if you think well of my services and character, you may give me such salary as the enterprise can afford, but aside from that I will accept nothing else. This is for the good of your undertaking. Of course I shall work for you and the success of Sixola with heart and might, but I think it better for the success of the scheme that I be not pecuniarily interested.

With regards, I am

Yours truly,

R. K. WARREN.

Oct. 25th, 1903.

*My dear Mr. McConnell.*—The sea was smooth as glass yesterday, and I sent to Sixola the large quantity of merchandise you sent from Mobile. Of course I used the best lighter we have for it. I sent also two lighters succors and one of lumber, in all of which I distributed 2 drumis gasoline, some seco, some sugar, some rice, and other supplies required by Mr. Dolder. I sent 3 launches to convoy the shipment, as my experience has taught me that it is dangerous to go out in the open sea with a train of lighters. If the sea remained calm, there would be no danger, but a squall coming up means destruction. I am most happy to state that at this writing, 7.30 A.M., the sea remains perfectly smooth, and at this hour the lighters should be all inside the bar safe and in perfect condition. I expect the launches back by this evening with the empty lighters already there.

\* \* \* \* \*

Yours truly,

R. K. WARREN.

There are but 3 to 4 lighter loads more of succors to move from Rio Biarra.

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OCT. 27th, 1903.

MR. H. L. McCONNELL,  
Mobile, Ala.:

Dear Sir,—Mr. O. F. Dolder is up to-day from Sixola, having taken passage on the last launch leaving the bar on Sunday afternoon. It is lucky we got the goods and things in just as we did, otherwise it might be a considerable time before we could get across the bar. The sea is raging to-day, and from looks of the weather I fear the bad season has set in, though it may get calm enough to let us in with the three lighter loads of succors and further provisions which Dolder is buying to-day for the winter.

\* \* \* \* \*

Mr. Dolder desires me to procure for him a burning brand with the name "H. L. McConnell," so he can stamp all your utensils, stock, etc., with it. I bring the matter to your attention, not ordering.

There is nothing new in the situation other than the within.

Yours truly,

R. K. WARREN, Atty.

[*Copy in Letter to Mr. R. K. Warren, Nov. 13, 1903.*]

NOVEMBER 13, 1903.

Messrs. MORALES & VALDES, Attorneys,  
Republic of Panama:

Gentlemen,—Your Mr. Valdes' letter of September 26th, addressed to Messrs. Valverde and Warren at Bocas del Toro, was greatly delayed in reaching the latter. He, however, finally received it, and forwarded it to me with an English translation. That letter, together with enclosures and your previous one addressed to Dr. Valverde at Colon, explained fully the situation concerning my concession as far as Colombia and what was formerly the Government of Panama are concerned. Now that Panama has declared her independence, Colombia's action in declaring the concession null and void amounts to nothing, and the Department of Panama could, of course, not suspend it without the consent of both parties to the contract.

Please make an effort to obtain the tacit consent of the proper authorities of the Republic of Panama for me to continue the improvements as contemplated by the terms of the concession, and as soon as the indepen-

dence of Panama is established make an effort to have the concession ratified by the Assembly of the new Government.

When my power of attorney is required to enable you to act in this matter, please prepare and send to me one that will cover the necessities of the case, and instruct me before whom it should be executed.

The United States Government has requested Costa Rica to permit my work to continue under her temporary jurisdiction, hence there can be no valid objection on the part of Panama to my doing so.

Mr. Warren will send you a draft for the amount requested in a previous letter to Dr. Valverde.

Trusting that your efforts in my behalf with the new Government will prove successful, and awaiting your advices, I am,

Yours truly,

H. L. McCONNELL.

#### THE PURCHASE OF DiGIORGIO'S PLANT.

MOBILE, ALA., U.S.A., August 1, 1903.

MR. M. C. KEITH, V. P.,

Whitehall Building, 17 Battery Place, New York:

*Dear Sir*,—Mr. McConnell, who left last night for Birmingham, requested me to acknowledge receipt of your favor of the 27th ulto., also to advise you that we had at last disposed of our Bocas opposition so far as DiGiorgio is concerned. I enclose you herewith for your information a copy of the articles of agreement between that Company and ourselves, which is self-explanatory, and which, I believe, will meet with your approval.

Mr. McConnell will write you further regarding this and other matters upon his return, which will be in a day or two.

Yours truly,

T. D. NETTLES,  
*Secy. and Treas.*

#### UNITED STATES OF AMERICA.

STATE OF ALABAMA,  
COUNTY OF MOBILE.

KNOW ALL MEN BY THESE PRESENTS that the DiGiorgio Importing & Steamship Company, a corporation created by and existing under the laws of the State of Maryland, party of the first part, for and in considera-

W

tion of the sum of twenty-five thousand dollars, to it in hand paid by the Camors-McConnell Company, a corporation, party of the second part, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, convey, assign and deliver unto the said party of the second part, its successors and assigns, all the property of every kind and description belonging to the said party of the first part situated at or near Bocas del Toro in the United States of Colombia, consisting principally of three new Wolverine launches, named Annitta, Amelia, Merietta, twenty-two (22) lighters (eighteen or twenty of which are new and two or four old, probably bought of Wilson), one boat supposed to be a sloop, all lighter material, such as metal, lumber, gelt, etc., all rope, lanterns, and all loading paraphernalia, all notes of C. W. Beckmann & Co., amounting to \$6,500.00 and maturing from time to time, within a period not exceeding five years from the date hereof. And the said party of the first part does hereby agree and bind itself to deliver all of the foregoing property to the said party of the second part as soon as possible.

And for the same consideration paid to the said party of the first part, it, the said party of the first part and Joseph DiGiorgio, do hereby agree and bind itself and himself that they and each of them shall for a period of ten years from the date hereof refrain and keep from either directly or indirectly engaging in the shipping or growing of bananas at or near said Boca del Toro.

And the said party of the first part for itself and its successors covenants that it has a fee-simple title to the property herein described, that it is in quiet and peaceable possession of the same, that it has a good right to sell and convey said property, and that it will warrant and forever defend the same against the claim of all persons now claiming or hereafter to claim the same.

Witness the hands of DiGiorgio Importing & Steamship Co. and of Joseph DiGiorgio, in triplicate on this 31 day of July, 1903.

(Signed) DiGIORGIO IMPORTING & S.S. Co.  
JOSEPH DiGIORGIO, Pres.

(Signed) JOSEPH DiGIOBBIO

Witness,

T. G. McDONIGAL.  
C. W. SINNERS

Acknowledged and certified to before the Consul of Colombia, at Mobile,  
Ala., July 31, 1903.

AUGUST 3, 1903.

MR. M. C. KEITH, Vice-President,  
United Fruit Company,  
Whitehall Building, 17 Battery Place, New York:

*Dear Sir*,—Referring to your letter of the 27th ulto. and Mr. Nettles' of Saturday, enclosing you a copy of the bill of sale of the DiGiorgio properties, I have to state that I regretted making the arrangements, since the United Fruit Company felt that the money obtained in that way would help him in his Eastern fight with you, but our situation in Bocas was such that we could not afford to have him continue there; especially when there was a possibility that his line to that port would become permanent. Were we growing a larger amount of fruit, we could have afforded to have continued the fight, but of late our cargoes were growing smaller, while DiGiorgio's were increasing.

In reply to the latter part of your letter I wish to state that it is my sincere desire to continue working in harmony with your Company. I, however, do not yet feel disposed to abandon the idea of improving Gadoan as a harbor. Nearly all of the expert harbor improvement engineers seem to have work on hand, hence I have found it difficult to arrange to have the situation investigated, but I now expect to have a reliable opinion on the feasibility and cost of the undertaking in a few weeks, after which I will either see or write you concerning the matter.

Yours truly,

H. L. McCONNELL,  
*President.*

## CHAPTER 2.

The agreement for the formation of the Camors-McConnell Company, in which McConnell agreed not to engage in any banana business except in connection with the said company.

THIS AGREEMENT made between Andrew W. Preston of Brookline in Massachusetts of the first part, and J. B. Camors of New Orleans and Herbert L. McConnell of Mobile, doing business under the firm name of Camors, McConnell & Company of the second part, and Louis Weinberger, Jacob Weinberger, Victor Camors and Charles Weinberger of the third part, and Rudolf Braden of Boca del Toro, Republic of Colombia, J. W. Kroesmann, Ernst Braden and John C. Dehls, doing business under the firm name of Kroesmann, Braden and Company of the fourth part;

WHEREAS the said Camors, McConnell & Company are engaged in the business of growing, transporting and selling tropical fruits, and desire to transfer all of their said business and all their good will, contracts, choses, franchises and privileges, used, useful or convenient in conducting said business or appertaining thereto, to a corporation as hereinafter described, and the other said parties of the third and fourth parts are interested in the said business of the said Camors, McConnell & Company, and the said Preston desires to obtain an interest in the said new corporation:

NOW, THEREFORE, in consideration of the premises and of the mutual agreement hereof, and of the sum of one dollar unto the said other parties by the said Preston in hand paid, the receipt whereof is hereby acknowledged it is hereby agreed as follows:

1st. The said Preston shall cause to be formed a corporation under the laws of the State of New Jersey to be called the Camors, McConnell Company hereinafter referred to as the new corporation, with a capital stock of sixty thousand one hundred and twenty-five dollars, divided into four hundred and eighty-one shares of the par value of one hundred and twenty-five dollars each, with power to carry on the present business of Camors, McConnell & Company, and to be governed by a Board of five Directors. The expense of forming the new corporation shall be borne by it.

2nd. The said Camors, McConnell & Company shall sell, assign and transfer to the said new corporation all of the property, effects, good will, contracts, franchises and privileges, and all books, papers, choses and documents used in or appertaining to their said business, whether vested or standing in the name of the said copartnership, or of any individual member thereof, or of any other person, firm or corporation, and in return therefor the new corporation shall issue to the said Camors, McConnell & Company three hundred and twenty-one shares of its capital stock, full paid and non-assessable, and shall assume the debts, liabilities and obligations of the said Camors, McConnell & Company specified in the second schedule hereto. The said Camors, McConnell & Company hereby guarantee that they own and will assign and transfer to the new corporation hereinbefore described, the property and effects specified in the first schedule hereto. It is expressly understood and provided that the plantations which are now owned and held by the Boca del Toro Banana Company, but not its loading plant, shall be included in the property hereinbefore described, as used in and appertaining to said business.

3rd. The said Preston shall buy and the said Camors, McConnell & Company shall sell and deliver to the said Preston and to such persons as he shall appoint, one hundred and sixty-one shares of the said capital stock of the new corporation for the sum of thirty thousand dollars payable in cash. To the end that the said Preston shall retain, so long as he desires, the power to elect three of the five directors of the new corporation, and the other stockholders shall have and enjoy the power to elect two of the five directors, the said Preston agrees to and shall transfer and assign one of the said one hundred and sixty-one shares so deliverable to him, to a trustee of his own nomination, to be held by said trustee, irrevocably and perpetually in trust to vote in person or by proxy upon said share in all elections of Directors of said Company, for such three directors as the said Preston or his assigns shall nominate and for such two Directors as the owners of the one hundred and sixty shares of the capital stock retained by the second, third and fourth parties or their assigns shall nominate; but the said one share of stock so transferred to said trustee shall have no vote for any other purpose, and the holder thereof shall have no power to vote upon the same for any other purpose whatsoever at any meeting or proceeding of the said new corporation, and no dividend shall be declared upon said stock, it being the purpose of this agreement that the second, third and fourth parties, and their assigns

shall receive one half of the dividends declared by the new corporation, and the said Preston and his assigns shall receive the other one half thereof. Said transfer to said trustee shall be upon the further trust, that if by reason of any proceeding, judgment, decree, finding or order of any court or otherwise, the said share and its holder should despite the above written provision, share in dividends or in distribution at winding up, then the same shall be by said trustee divided ratably among the holders of all the other shares in said corporation, according to their respective holdings at the time such dividends or distribution shall occur.

4th. The said Preston hereby agrees to subscribe for eighty additional shares in the capital stock of the new corporation and pay for the same the sum of ten thousand dollars in cash immediately upon incorporation, and the said parties of the second, third and fourth parts hereby agree that they will subscribe for eighty additional shares in the capital stock of the new corporation, and pay for the same the sum of ten thousand dollars in cash immediately upon incorporation.

5th. The said J. B. Camors and Herbert L. McConnell, Louis Weinberger, Jacob Weinberger, Victor Camors, Charles Weinberger, Rudolf Braden, J. W. Kroesmann, Ernst Braden and John C. Dehls, hereby jointly and severally covenant and agree that they will not either individually or by or through a corporation jointly or severally, directly or indirectly engage in the growing or importing or selling of tropical fruits or any other business directly or indirectly in competition with the new corporation, or with the United Fruit Company, except through the new corporation, until after the said Camors, McConnell Company, the new corporation, shall have ceased the active continuance and prosecution of the business of importing and selling such fruit, or shall have failed to have shown a profit for any calendar year after 1899. All profits earned by the new corporation shall be divided every three months by dividends declared. This provision shall not exclude any of the parties hereto from being concerned in the business or businesses of the Bluefields Steamship Company, Ltd., of the Camors-Weinberger Banana Company, Ltd., or the Orr-Laubenheimer Company, and provided further this provision shall not exclude Kroesmann, Braden & Company, J. W. Kroesmann, Ernst Braden, John C. Dehls or Rudolf Braden from engaging in a general mercantile business or from exporting cocoanuts or other produce excepting tropical fruits.

6th. The said second, third and fourth parties hereby agree that they will obtain from all persons directly or indirectly interested in the part-

nership of Camors, McConnell & Company, and so far as they are able to do so from all persons such conveyances and assignments as shall be necessary in the legal opinion of H. Pillans, Esq., to carry out these agreements.

7th. The said second, third and fourth parties jointly and severally for themselves, their successors, executors and assigns covenant that they will execute all deeds and assurances, and do all things which shall be necessary or convenient more fully and perfectly to vest in the new corporation the good will and effects provided herein to be vested in the new corporation or intended to be so vested, and will execute all such further instruments and do all such further things as shall be necessary or convenient to carry out these presents according to the true intentment thereof.

8th. Said Preston agrees that he will use his influence to the end that the manager of the new corporation in the United States shall be H. L. McConnell so long as he will act, provided said McConnell is in his opinion and in that of a majority of the remaining shareholders in the said new corporation other than himself and his assigns, a competent and fit person therefor, and that in case of the unfitness of said McConnell in his opinion and that of the said remaining shareholders or of his unwillingness to longer serve, then that he will use his influence so that the manager of the said new corporation in the United States shall be a person agreeable to the shareholders, other than the said Preston and his assigns, provided such manager shall be in his opinion a competent and fit person.

9th. The new corporation shall purchase from the said Kroesmann, Braden & Company all their right and the rights of John H. D. Finke in and to a banana farm at Boca del Toro now managed by them, for the sum of eight thousand dollars in gold, upon receiving sufficient documents of sale according to the laws of the Republic of Colombia, and the new corporation shall buy from the said Kroesmann, Braden & Company its loading plant, consisting of two steam launches, and eight lighters at the said Boca del Toro, for the sum of thirty-one hundred and seventy dollars, plus the cost of one new engine, which has been put in one of the launches "Mariposa," not to exceed one hundred dollars (the list of the said loading plant is hereto annexed in the third schedule) and the new corporation shall pay the said Braden three hundred dollars for services rendered in superintending the farms for the said Camors, McConnell & Company.

10th. The said new corporation shall buy the present existing load-

ing plant now belonging to the Boca del Toro Banana Company, now consisting of three launches, one sloop and ten or eleven lighters at such valuation as shall be agreed upon between the said Rudolf Braden and Michael T. Snyder, and in case they cannot agree then such valuation as shall be designated by such person as shall be selected by the said Braden and Snyder.

11th. The said new corporation shall enter into an agreement with the said Kroesmann, Braden & Company, extending for a period of ten years, which shall contain substantially provisions similar to the provisions contained in the agreement between the Boca del Toro Banana Company and Kroesmann, Braden & Company, dated the 15th of October, 1898, in paragraphs numbered 10th, 11th, 12th, 13th, and 17th, and the last said contract shall contain a provision whereby the new corporation shall agree not to charge any greater amount for freight for goods shipped for account of Kroesmann, Braden & Company from New Orleans to Mobile for shipments to Boca del Toro by steamers of said new corporation than it is obliged to pay for the same, and the said new corporation shall use its efforts to keep in effect existing verbal arrangements with respect to carrying the goods above described between New Orleans and Mobile.

12th. It is also agreed between the parties hereto that the Directors of the new corporation shall receive no compensation for acting as such Directors.

IN WITNESS WHEREOF the parties hereto have set their hands and seals this 8th day of December, A.D. 1899.

(Sgd) JACOB WEINBERGER.

(Sgd) CHARLES WEINBERGER,  
*per pro* Louis Weinberger.

(Sgd) J. W. KROESMANN.

(Sgd) ERNST BRADEN.

(Sgd) JOHN C. DEHLS.

(Sgd)

(Sgd)

ANDREW W. PRESTON,

by B. W. Palmer.

HERBERT L. McCONNELL.

CAMORS, McCONNELL & Co.

LOUIS WEINBERGER.

KROESMAN, BRADEN,

by R. Braden.

J. B. CAMORS.

V. CAMORS.

### CHAPTER 3.

The Romero concession and the official action of Colombia and Panama suspending and declaring the same to be void, also the declarations supposed to constitute rights to the possession of the public lands entered upon by McConnell.

#### THE ROMERO CONCESSION.

(Dated 2nd April, 1903.)

CONTRACT No. 44.

Julio Guerra, Secretary of the Treasury, duly authorized by the Governor of the Department, party of the first part (which hereinafter will be called the "Government"), and Ricardo Roman Romero, in his own name, party of the second part (who will hereinafter be called the "Concessionary"), have made a contract on the following terms:

1. The Concessionary obligates himself to construct and establish at his own expense, a railroad to be run by steam, which puts in communication the harbor called Gadokin, on the Atlantic Coast, in the District of Bocas del Toro, with the right bank of the Sixaola River, in the same District.
2. To present to the Government, for its approval, a Plan and Profile of the undertaking within the three months following the definite approval of this contract.
3. To place the railroad at the service of the public 18 months after the Plan mentioned in the foregoing Article has been approved.
4. To collect freight and passages in accordance with the tariff agreed upon with the Government, three months before the road is open to traffic: this tariff can be revised from time to time by the Government, and modified in accordance with the fluctuations of the prices of the fruits which are carried.
5. To give free transit to all mails, troops, baggage, ammunition, etc., and, in fact, to every employee in the service of the Government, with his equipment up to 200 pounds.
6. To keep the road, and the cars, in good condition for a term of fifty years.
7. To deliver the railroad to the Government with all its appurtenances, at the expiration of the fifty years fixed in the foregoing Article.

8. Not to transfer this contract without the permission of the Government, it being an express condition that if the transfer is made to a foreign individual or Company, that the provisions of Article 15, of the Law 145, of 1888, be complied with.

9. To guarantee the compliance with the obligation of clause No. 2 with a personal security satisfactory to the Governor to the amount of \$1,000. After the Plans have been approved, the Concessionary will put up a security of \$2,000 as a guarantee of the compliance with clause 3.

10. To renounce the subvention authorized by the law 129 of 1896.

The Government obligates itself:

A. To concede to Ricardo Roman Romero, or to whomever may represent his rights, the exclusive privilege for the construction and establishment of the railway run by steam, which puts in communication the harbor called Gadokin with the right bank of the Sixaola River, in the District of Bocas del Toro.

B. Not to allow, and to prevent another railway from being built in the privileged zone, which, it is understood, will be between two lines parallel with the railway drawn at the right and left of it, at one mile distant on each side.

C. To secure the Concessionary, or his representative to whom his privileges may be assigned, full and peaceable possession of the privilege granted by this contract for 50 years.

D. To permit the Concessionary, or his representative, to collect the passage and freight in accordance with the tariff approved by the Government three months before the road is open to public traffic.

E. To permit the importation of machinery and other articles intended for the construction of the road and suitable for such use free of duty.

#### GENERAL CONDITIONS.

*First:* The Government declares that before the law the road will be considered as a public accommodation.

*Second:* In case the Concessionary should not comply with the obligations entered into by this contract within the time stipulated, the security will become the property of the Department, and the privilege will become null and void, *de facto*.

*Third:* The Concessionary may form a Company in order to carry on the work.

*Fourth:* In case the work should be suspended for more than 6 months

during the construction of the road, or the service after the construction, this contract will be declared null and void, and the road will become the property of the Department, except in case of uncontrollable circumstances or the Acts of God.

*Fifth:* This contract must be approved by His Excellency, the Governor of Panama, in order to be valid.

IN WITNESS WHEREOF there are signed two copies of the same tenor in Panama, on the 2nd day of April, 1903.

JULIO GUERRA.

RICARDO ROMAN ROMERO.

GOVERNMENT OF THE DEPARTMENT.

Approved.

To be registered and communicated to the Assembly, and to be published.

F. MUTIS DURAN.

JULIO GUERRA,

*Secretary of Finance.*

THE TRANSFER OF THE ROMERO CONCESSION TO  
McCONNELL FOR \$100 (COLOMBIAN):

REPUBLIC OF COLOMBIA, DEPARTMENT OF PANAMA.  
FIRST NOTARY'S OFFICE OF THE CIRCUIT.

PANAMA, May 1st, 1903.

[FIRST COPY OF DEED No. 117 OF THIS DATE, BY WHICH MR. RICARDO ROMAN ROMERO TRANSFERS CERTAIN RIGHTS TO MR. HERBERT L. McCONNELL.]

NUMBER 117.

In the City of Panama, Capital of the Province and Department of the same name in the Republic of Colombia, on the first day of May nineteen hundred and three, before me, Octaviano Bienvenido Perez, first Notary Public of the Circuit of Panama, appeared Messrs. Ricardo Roman Romero and Herbert L. McConnell, males and of legal age; the first named a resident of Bocas del Toro and the second a citizen of the United States in transit in this city—both known to me, and they delivered to me a memorandum to be converted into a public instrument, which copied literally reads as

follows:—"To the Notary Public, No. 1, Present. I inscribe in your protocol of the current year an instrument by which, be it known that I, Ricardo Roman Romero, Colombian, of legal age and a resident of the District of Bocas del Toro, transfer, cede, and convey as a sale to Mr. Herbert L. McConnell, an American citizen in transit in this Department, all the right that I have acquired by the contract No. 44 which I made with the Government of the Department on the second day of the present month for the building and working of a steam tramway in the District of Bocas del Toro—said contract to be inserted in the same instrument or deed. By virtue of this conveyance Mr. McConnell acquires from this date all the rights possessed by me in the already mentioned contract, and he also accepts and binds himself to comply with the obligations of the said contract. This cession I have made in consideration of the sum of One hundred dollars (\$100) Colombian currency, which I have received to my entire satisfaction. Mr. McConnell signs this memorandum in proof of accepting same and will also sign the instrument. The Notary will add the necessary clauses to ensure the perfect validity of this instrument. April 30th, 1903.  
R. R. Romero. H. L. McConnell."

The contract No. 44 mentioned in the preceding memorandum faithfully copied is as follows: (Here follows a copy of the Romero concession as found on page 6.)

The Registration has been paid, as may be seen by the respective ticket annexed and which reads:—Republic of Colombia, Department of Panama—General Administration of Finances—Seventh Volume—I certify that on page three hundred and thirty-one (331) of the book for the inscription of the registration tax is to be found, bearing No. 242, the following: Panama, April the thirtieth, 1903. Mr. Octaviano B. Perez has paid the sum of 0.20 twenty cents for the registration of a deed which Mr. Ricardo Roman Romero is going to execute by which he conveys to Mr. Herbert L. McConnell, for the sum of One Hundred dollars (\$100.00) the rights he has acquired in a contract made with the Government relative to the building and working of a steam tramway in the District of Bocas del Toro. The Administrator General—Manuel E. Amador (L.S.)—Having read this instrument, which was duly translated to Mr. Herbert L. McConnell by the Official Interpreter, Mr. McConnell not being conversant with the Spanish language, in the presence of the instrumental witnesses, Messrs. Enrique Cesar Julio and Ramon M. Valdez, males, of legal age and of this vicinity, known by me and having no impediment to act as such, it was approved by the contracting parties, to whom I made known the formalities of regis-

tration of the first copy within sixty days in the proper office—The Secretary of Finance being present stated that having been duly authorized by the Governor of the Department, he gives his permission to Mr. Ricardo Roman Romero in the name of the Government that he may transfer this contract to Mr. Herbert L. McConnell, and he therefore imparts his approval to this deed. Here follow signatures. Addenda. At this state and in the presence of the Secretary of Finances it was decided that clause first of this contract should be understood: that the right margin is the part of the river that remains to the right hand against the stream. Julio Guerra. Ricardo Roman Romero. Herbert L. McConnell. E. C. Julio. Ramon M. Valdez. Manuel E. Recuers, Official Interpreter. Octaviano B. Perez, Notary Public No. 1.

This first copy which I now sign, seal and deliver to Mr. McConnell is in accordance with the originals and of this date. Octaviano B. Perez, Notary Public No. 1. (L.S.)

Office of the Registrar of Public and Private Instruments, Panama, fourth of May of the year nineteen hundred and three. This instrument has been duly registered in two parts. The contract in the Book Number two (2), duplicate pages (70 to 75) seventy to seventy-five, and the conveyance in Book Number two (2), pages (143 to 144) one hundred forty-three to one hundred forty-four, and this instrument bears inscription number (118) one hundred and eighteen. The Registrar, Carlos Barona.

The foregoing is a true translation of its original.

*The Official Interpreter of Bocas del Toro,*

MAY 13th, 1903.

EDW. C. OUTTEN.

#### DECLARATION BY THE CENTRAL GOVERNMENT OF IN- VALIDITY OF ROMERO CONCESSION.

(Dated 31st August, 1903.)

OFFICE OF THE SECRETARY OF HACIENDA, BOGOTA,

31st August, 1903.

Examining the contract made between the Government of the Department of Panama and Mr. Ricardo Roman Romero, regarding the construction and exploiting of a railroad from the anchorage called Gadokin, on the Atlantic Coast, in the District of Bocas del Toro, to the right bank of the Sixaola River, it appears:

1. The Secretary does not find the power in the Governor to make the

contract in question, as the terms of the law No. 104, of the year 1892, regarding railroads, are not applicable to the case, and the powers conceded to the Executive body by the said law cannot be extended to the Governors of Departments.

2. That the law No. 129, of 1896, in regard to railroads authorizes the Governors of Departments only to declare, as of public utility, the work done on railroads which is executed in accordance with the provisions of the said law, and to concede subventions to such, but not to make contracts like the one in question.

3. That it is alone in the power of the Departmental Congress to give privileges for undertakings of this kind, and to decree their execution in accordance with article 105 of the Constitution and of article 129 of the Political and Municipal Code. Therefore, for these reasons, having heard besides the opinion of the consulting lawyer of this Secretary, it is

*Resolved*, That the Government abstains from approving the contract made with Mr. Ricardo Roman Romero for the construction and exploiting of the railroad in the Department of Panama, which contract, in the opinion of this office, is void if it is not made with the express authority of the Congress of the Department, or with its approbation.

To be communicated to whom it may concern.

*The Secretary of Hacienda,*  
R. FERREIRA,  
Bogota.

#### THE SUSPENSION OF THE ROMERO CONCESSION BY GOVERNOR DURAN.

OFFICE OF THE GOVERNOR OF THE DEPARTMENT;  
SECRETARY OF THE TREASURY; SECTION 3, No. 78.

PANAMA, September 9th, 1903.

"Whereas: On April 2nd of the current year upon petition of Mr. Richard Román Romero, this office entered into a contract with the said gentleman, for the construction of a steam tramway which was to connect the small bay of Gandocan with the *right* bank of the Sixaola river in the said contract, which is numbered 44, by the 2nd Clause, the *concessionnaire* is bound to present to the government, for its criticism, within three months after its final approval, the plan and profile of the work, and, as a guaranty that he would fulfil this part of the contract, he offered as surety Mr. Herbert L. McConnell, who executed the proper instrument under date of the

20th of April. Subsequently on the 1st of May Mr. Román Romero transferred said contract to McConnell by deed Number 117 and with the consent of the undersigned. In due season Mr. McConnell presented the plan and profile required by clause 2 of the said contract, when examining the same it was seen at the first glance that the proposing party had made a mistake, undoubtedly involuntary, because the tracks for the railway run from the *left* bank of the Sixaola river to the Atlantic, to a small bay or inlet which does not appear on the official maps of that region, a mistake for which the concessionary cannot be made responsible, as it goes against his own interests, nor the Department either, for the same reason, and moreover because at the time when this contract was entered into it had no knowledge of the existence and less still of the place where this bay is situated, called Gandoan, since if that information had reached the government before it would not have entered into the said contract.

"Now therefore it is resolved

"1. Let there be cancelled the instrument of guaranty executed by Mr. Herbert L. McConnell in fulfilment of the obligation undertaken by Mr. Román Romero in the 2nd clause of the said contract No. 44.

"2. As long as the boundaries are not fixed definitely with the Republic of Costa Rica and as long as Colombia cannot enter upon the possession of the land that is coming to it according to the Loubet award, the terms of the said contract are suspended without the contracting parties incurring any responsibility on that account, since it has been shown that there was no bad faith on the part of either.

"Record, notify and publish.

"For the Governor.

*"The Secretary of the Government,*

*"JULIO GUERRA."*

#### REFUSAL OF THE GOVERNMENT OF THE REPUBLIC OF PANAMA TO RECOGNIZE THE ROMERO CONCESSION.

[TRANSLATION.]

REPUBLIC OF PANAMA.

MINISTER OF FOMENTO.

No. 33.

SEC. 1a.

PANAMA, Sept. 14, 1904.

Mr. H. L. McConnell requests, in the foregoing memorial, that the Government of the Republic of Panama shall arrange with the Govern-

ment of Costa Rica that, provisionally and pending the settlement of the boundaries between the two Republics, no impediment shall be offered to the work in which he is now engaged on the spot denominated "Gandocan," situated on the left bank of the Sixaola River.

Although this Department has concluded that the Republic of Panama does not recognize as valid the contract entered into between Mr. Ricardo Roman Romero and the Governor of the extinct Department of Panama, which was eventually transferred to Mr. McConnell, it nevertheless, in consideration of the work that the petitioner has done on the spot, denominated "Gandocan" in matters of agriculture in a large scale, investing therein a large capital, the Government is willing to afford him all possible protection within its sphere of action.

In consequence, the Government resolves:

To request the Secretary of Government and Foreign Affairs to address the Government of Costa Rica and to demand from said Government that, provisionally and pending the settlement of the precise boundaries between the two Republics, no impediment be offered by the authorities of the Government of Costa Rica to Mr. H. L. McConnell in the work in which he is now engaged in the place denominated "Gandocan."

To be registered and communicated.

By the President of the Republic.

*The Secretary of Public Works,*  
 (Signed) MANUEL QUINTERO.  
 "C."

Authentic copy.

*The Sub-Secretary,*  
 (Signed) LADISLAO SOSA.

(SEAL)

[TRANSLATION.]

REPUBLIC OF PANAMA.  
 EXECUTIVE NATIONAL POWER,  
 MINISTRY OF GOVERNMENT.

SECOND SESSION.

BUREAU OF FOREIGN RELATIONS,  
 PANAMA, September 22nd, 1904.

MR. H. L. McCONNELL,

Present:

For your information and final consequence, I remit you herewith the

resolution which on this date was dictated by this office. Such reads as follows:

"Republic of Panama: Executive National Power.—Office of the Secretary of Foreign Relations.—No. 42.—Panama, Sept. 22nd, 1904.—The office of the Secretary of Public Works urges in resolution No. 33 of the 14th inst. that the Office of the Secretary of State and Foreign Relations demand of the Government of Costa Rica the discontinuance of interference with the work, which Mr. H. L. McConnell is carrying on at the place called 'Gadocan.' As the execution of the arbitrated decision limits between Panama and Costa Rica is being discussed at these moments, this Office does not consider it prudent at present to make the requested demand and be it so resolved. Inform the Secretary. Tomas Arias."

Yours, etc.,

(Signed) TOMAS ARIAS.

NOTARIAL ACT DATED 16TH MAY, 1904, INCLUDING AFFIDAVITS  
PRELIMINARY TO THE DENOUNCEMENTS OF UNOCCUPIED LANDS ON  
THE SIXOLA RIVER.\*

NUMBER SEVENTY-EIGHT. At Bocas del Toro, Capital of the Province and Head of the Notary Circuit of the same name, before me, Adolfo Cervera, the Acting Notary Public of the said mentioned Circuit, on the sixteenth day of May, 1904, and the instrumental witnesses, Messrs. Francisco Rodriguez C. and Mariano Mora Gutierrez, both of this neighborhood, persons of age, of good standing and of which there exists no legal impediment for them to act as aforementioned witnesses, there appeared Mr. Otto F. Dolder, a person of age and also of this neighborhood who I attest is known to me, and presents me a minute in which he solicits me to place in the records of the archives of this office under my charge the depositions made and legally recorded which assures the right of occupation of certain uncultivated lands by Mr. Herbert L. McConnell in the region of the River Sixola. He also presented me the voucher given him by the Secretary of the Treasury verifying the payment of the fees due, according to law, for recording same. The minute copied testually says: "To the Notary Public of the Circuit, Present. In order that you should embody in your book of records of public instruments, of which you are in charge for this present year, I herewith at the solicitation of Mr. Herbert L. McConnell present you the depositions taken in law, before the Mayor of this District, and in presence of the Recorder to affirm, his occupation

\* These proceedings were supposed to be based upon the Colombian Land Laws, *infra* p. 290.

with houses, tillages and permanent cultivations of certain uncultivated national lands which lie on both sides of the river Sixola, in this jurisdiction, extending from three miles from the mouth of said river towards the source of same; this procedure is made out on eleven sheets fully written. Kindly, Mr. Notary, add the necessary stipulations so that this procedure will have all its legal value." Bocas del Toro, May 16th, 1904. O. F. Dolder.

In virtue of which, I the undersigned notary proceeded to embody this deed, so as to form part of the current records of public instruments: the deed is made out in fourteen sheets including this procedure and the voucher already mentioned. This instrument having been read to the party concerned, he found it correct, approved same and signed same before me and the witnesses already mentioned, also each in the presence of the other and I, the Notary Public who attests. O. F. Dolder: Francisco Rodriguez C.: M. Mora. The Acting Notary Public,

ADOLFO CERVERA.

The voucher mentioned copied literally says:

"Republic of Panama, Province of Bocas del Toro, Office of the Provincial Treasury, Voucher No. 101. Dr. Francisco has paid the sums of one dollar (\$1.00) for the right of having recorded certain procedures which verifies certain legal-binding depositions, asked by Mr. H. L. McConnell as to possession and cultivation of certain uncultivated lands in Sixola. Bocas del Toro, May 16th, 1904: The Secretary of the Treasury, Benjamin Aguilero. (seal.)"

The procedures recorded literally say: To the Mayor of the District:— I, Herbert L. McConnell, citizen of the United States of North America, here in business and of this neighborhood, with all due respect petition you to appear before you, Messrs. Felipe Robinson, C. Rogillo Pardo, Otto F. Dolder, Langley O'Neill, and Ricardo R. Romero, all residents of this District of Bocas del Toro, Province of Colon, in the Department of Panama, publicly known as persons of good standing and consequently qualified under all considerations to act as witnesses, and have them render oath and all other judicial compulsion established by law, before you, and in the presence of the Recorder to-day represented by the Deputy of the Municipality, their depositions on the following points which I express below.

1st. As to my cognizance and if the law embraces them with me in any form.

2nd. To have them all state to a certainty if they know the lands that lie on both sides of the river Sixola, in the jurisdiction, from three miles

up from the mouth of said river, up to five miles of its course, and an equal distance to the depth of the forest on each side of the river, thereby forming on both sides a perfect square.

3rd. To state the same form, if they know that said lands have been and still are uncultivated; that they have never been known to have had private ownership and consequently belong to the Nation.

4th. To also declare to a certainty and because it has been affirmed, that the land in reference has not been, nor is destined by the Nation to any determined public use, such as roads, new villages, maritime or river ports, arsenals, docks or for any other usages which are enumerated in Article 918 of the Fiscal Code of the Republic.

5th. To state in the same way if they are not assured that the land in question is not near any railway, or of any lines surveyed or in project, to a distance of two or more leagues from its border. To declare if they affirm that in the land mentioned there is not known to exist (neither in the lands contiguous to it) any known coal mines, rock salt, precious stones, salt foundations nor any other substance which by law the Nation has a right to reserve.

The testimonies having admitted in the form indicated, I request you in the manner established by the Judicial Code to certify the aptitude of the witnesses to declare. All this being accomplished I ask you to have the originals returned to me to use them in the way that I may consider most advantageous to my interests. Bocas del Toro, May 19th, 1903.

H. L. McCONNELL, by R. K. WARREN, *Attorney.*

Received to-day, the nineteenth day of May, 1903, and delivered at the Mayor's office. The secretary, Gmo. G. de Paredes.

Municipal Jurisdiction of the District, Bocas del Toro, May 18th, 1903. As solicited in the previous memorial, summon the witnesses therein mentioned, so that in accordance with the interrogatory contained in it, they shall render their declarations, previously complying with all the legal formalities, in the presence of the Recorder. Notify the parties. The Mayor, Rogelio Fabrega; The Secretary Gmo. G. de Paredes; on this same date I notified the Municipal Deputy.

In Bocas del Toro, on the twenty-fifth day of May, 1903, there appeared in the office of this Municipal Jurisdiction Mr. Roberto R. Romero, with the object of rendering a declaration. The Mayor admitted him under oath, duly rendered, after reading to him the articles in the Penal Code

relating to the matter in hand, in reference to false witnesses and perjurors, and he promised to tell the truth as far as his knowledge, to any questions asked him. As to his identification, he said his name is the above mentioned; that he is of age, married, a lawyer, a native of the Department of Panama and of this neighborhood. The memorial at the heading of these procedures, signed by Mr. H. L. McConnell was submitted to him, and as to the first point of the interrogatory said: that he knows McConnell, and is not included with him in the general forms of the law. To the second he answered that he knows the lands lying on both borders of the river Sixola, in the jurisdiction of this District from three miles of the mouth of the river, up to five miles of its course; and some distance to the depths of the forest on either side, thereby forming a perfect square on both borders; to the third he said that he also knows that said lands have been and are reputed as uncultivated; that the last time he saw them they were not in cultivation; that he has never known of any private ownership; in virtue of which, he asserts they are the property of the Nation; to the fourth he answered that he affirms as certain that the said land has not been nor is destined by the Nation for any possible use, such as roads, new villages, maritime or river ports, arsenals or docks or for any other usages that are expressed in Article 918 of the Fiscal Code of the Republic. This he affirms from the fact that when any official measures of this nature are acted upon, it becomes publicly known and he has never heard, nor has he any knowledge that any disposition has been made to turn the land in question to any public use, to which the question refers. To the fifth he answered, he is assured that the land in question has not been destined for any particular end nor is it near any railroad or any line in project of construction or to be surveyed, with the exception of the one referred to in the contract in which Mr. McConnell binds himself with the Government to construct a tramway, which line the witness has no knowledge if it is to remain at the distance which is mentioned in the question. To the sixth and last he states that he knows and affirms that within the mentioned land there exists no coal mines nor of any other kind. There being no further answers required from the expositor this act is considered ended, which having been read to the expositor, he affirms and ratifies same and for evidence he places his signature next to that of the Mayor in the presence of the undersigned Secretary. It is placed in evidence that this exposition was in conformity with Article 633 of the Judicial Code.

The Mayor, Reglio Fabrega; The Declarer, R. R. Romero;  
The Municipal Deputy, Serafin Jovano; the Secretary  
Gmo. G. de Paredes.

In Bocas del Toro on the 13th day of June, 1903, there appeared in the office of this Jurisdiction, Mr. Otto F. Dolder with the object of making a declaration. Having given his oath in due form in the presence of the Mayor and the Municipal Deputy and fully understanding the gravity of same by the creed of the religion he professes, and after submitting to him the articles in the Penal Code which refer to false witnesses and perjurors, he stated that he would state nothing but the truth as far as his knowledge, to any questions required of him. As to his personal identification he says his name is the above mentioned, he is of age, a native of Switzerland, a bachelor, a farmer in this neighborhood, and professes the Protestant religion. Being asked, "Do you know Mr. H. L. McConnell, and are you included with him in the general forms of the law?" he answered, "Yes, I know Mr. Herbert L. McConnell and I am not included with him in the general forms of the law." Being questioned as to the second point of the interrogatory in the preceding memorial subscribed by Mr. Herbert L. McConnell, he says that in certainty he knows the lands lying on both borders of the Sixola River in this District from the distance of three miles of the mouth of the river, up to five miles of its course, and the same distance in the depths of the forest on both sides of the river, forming a perfect square. To the third point he says that he knows and affirms that said land is uncultivated, that it is not now in cultivation, that he knows of no private ownership of same and in consequence it belongs to the Nation. To the fourth question, that he has no knowledge whatsoever that the land in reference has been allotted to public use. To the fifth point, that he knows and affirms that the land in question is near only to the railroad project by the petitioner himself and that at the present time there are not any roads or ports in the immediate vicinity. To the sixth and last point he states that there is not in existence in the zone of the land solicited, any salt mines, nor that of any other kind. There being no further information required from the expositor the act is considered ended, the contents of which having been submitted to him he affirms and ratifies same for evidence and signs. The Mayor certifies that this deposition was made in accordance with the stipulations contained in the article 633 of the Judicial Code.

The Mayor, Alberto G. de Paredes; the Declarer, Otto F. Dolder; the Municipal Deputy, Serafin Jovane; the Secretary, Rogelio Fabrega.

In Bocas del Toro, on the 13th day of June, 1903, there appeared in the

office of this Municipal Jurisdiction, Mr. Langley O'Neill with the object of rendering a declaration. The Mayor in the presence of the Municipal Deputy, required him to give his oath, which was done in due form by the expositor, after submitting to him the clauses of the Penal Code which relate to the matter in hand as to perjury and giving false evidence. And he promised to state the truth only as far as his knowledge, to any questions made to him. Being asked as to his personal identity, he said that the same above given is his own, that he is of age, a bachelor, farmer, and a native and neighbor of this Provincial Capital. Asked as to the tenor of the interrogatory put forth by Mr. H. L. McConnell at the beginning of these procedures, he answers as to the first point, that he knows who presents it and is not included with him in the general forms of the law. To the second, that he knows the land lying on both borders of the Sixola River in this District, from the distance of three miles from the mouth of the river, up to five miles of its course, and the same distance to the depths of the forest on both sides of the river, forming a perfect square. To the third point he says that the land is uncultivated; the part of land mentioned is not tilled as the planters that may be encountered around are located more than five miles from the mouth of the river, and he has never known of any other right of possession outside of the Government or Nation. To the fourth point he states that he has no knowledge that said lands have ever been destined for public use such as roads, new villages, maritime and river ports, arsenals or docks. To the fifth he says that he has no knowledge that these lands are near any railroad or any line in project of construction or survey, within two or more leagues of its boundaries. To the sixth and last point he says, "I have no knowledge that in the land in reference, or those contiguous to it, there exist coal mines, rock salt, precious stones, salt deposits or any other substances." There being nothing further to ask the expositor this act is considered at an end, and after having same submitted to him, he affirms and ratifies it, signing in evidence. The Mayor certifies that this declaration was made in accordance with the stipulations in Article 633 of the Judicial Code.

The Mayor, Alberto G. de Paredes; The Declarer, Langley O'Neill; the Deputy, Serafin Jovane; The Secretary, Rogelio Fabrega.

In Bocas del Toro on the 16th day of June, 1903, there appeared in the office of this Municipal Jurisdiction, Mr. Felipe Robinson Lopez, with the object of rendering a declaration. The Mayor in the presence of the Munici-

pai Deputy required him to give his oath, which was done in due form, after being informed of the Articles of the Penal Code, relating to perjury and false witnesses, he promised to state nothing but the truth, as far as his knowledge, to any answer required of him. As to his identity he said his name is the same as mentioned above: he is of age, married, freeholder, native and resident of this City. Being asked as to the preceding memorial which was submitted to him, subscribed by Mr. H. L. McConnell, he answered to point first, that he knows the party who presented same and that he is not included with him in the general forms of law. To the second he says that he knows to a certainty the lands lying on both sides of the Sixola River in the Jurisdiction of this District, from the distance of three miles from the mouth of the river up to five miles of its course, and the same distance to the depths of the forest, on both sides of the river, forming a perfect square. To the third point he answered that this land is uncultivated; has never been under cultivation and has not known of any rights of ownership outside of the Nation. To the fourth he says that he does not know nor can he affirm if said land has been destined by the Government for any public use, such as roads, creation of villages, maritime or river ports, arsenals, docks, or for any other purpose. To the fifth the land in question is not near any railroad or of any line in project or survey, to a distance of two or more leagues from its limits. To the sixth and last point he said that he knows and can affirm that there exist coal mines within these lands, but has no knowledge of the existence of any other kind of mines of which the law gives the Nation the right of Eminent Domain. There being no further questions to be made to the witness, this act is closed, the contents of which having been submitted to him he affirms and ratifies same, and for evidence places his signature herein, next to the Mayor, and jointly with the Deputy, in the presence of the undersigned Secretary. The Mayor certifies that this deposition was made according to the stipulations contained in Article 633 of the Judicial Code.

The Mayor, Albert G. de Paredes; the Declarer, Felipe R. Lopez;  
the Municipal Deputy, Serafin Jovane; the Secretary,  
Rogelio Fabrega.

In Bocas del Toro on the 16th of June, 1903, appeared in the office of this Municipal Jurisdiction, Mr. Rogelio Pardo, with the object of rendering a declaration. The Mayor, in the presence of the Municipal Deputy, required him to give his oath, previously submitting to him for his guidance the articles in the Penal Code which relate to the matter in hand, as to

perjury and false evidence. He said he would tell nothing but the truth, as far as his knowledge in reference to any questions put to him. Asked as to his identity he replied that the name above given is his own, that he is of age, married, native of the Department of Bolivar, property holder and of this neighborhood. Being asked in conformity with the interrogatory contained in the memorial placed at the beginning of these procedures and subscribed by Mr. H. L. McConnell, he replied on the first point: "I know Mr. H. L. McConnell and am not included with him in the general forms of the law." To the second point: "I know to a certainty the lands that lie on either side of the Sixola River, in this District, from the distance of three miles from the mouth of the river, up to five miles of its course, and the same distance to the depths of the forest on both sides of the river, and on each side forming a square." To the third point he said: "The land to which I refer is uncultivated and as such I have always known it, but I have heard that there now exist near the banks of the Sixola River a number of small plantations." To the fourth he replied: "I have no knowledge, nor do I affirm on this point, as to the Nation destinating these lands to any public use such as roads, maritime and river ports, arsenals or docks." To the fifth he says: "The land in question is not near any railroad, nor any line in project or survey within two or more leagues from its limits." To the sixth and last point he replied: "Yes, I have heard said that in the lands alluded to there exist coal mines, and I have been shown samples of same, which I have been assured came from these mines. As to the existence of any other kind of mines, which by law the Nation has a right to reserve, I know absolutely nothing." There being nothing further to ask the expositor this incident is closed, and after having repeated same to him he affirms and ratifies it and signs for evidence. The Mayor certifies that this declaration was made in accordance with the stipulations contained in Article 633 of the Judicial Code.

The Mayor, Alberto G. de Paredes; the Declarer, Rogelio Pardo; the Municipal Deputy, Serafin Jovane; the Secretary, Rogelio Fabrega.

Office of this Municipal Jurisdiction, Bocas del Toro, June sixteenth, nineteen hundred and three.

The foregoing procedures having been declared closed, notify party concerned and return him the originals.

The Mayor, Alberto G. de Paredes; the Secretary, Rogelio Fabrega.

On this same date I notified Mr. H. L. McConnell of the decree above mentioned.—“Fabrega.”

Comparing all the foregoing with the originals that from the body of this writ, recorded under number 78, I find it to be a true and faithful copy of all of them, and I, the undersigned Notary so attest, and issue this first Code written on twelve sheets, for the use of the party concerned, and signed same on the 16th day of May, 1904.

*The Acting Notary Public,*

(signed) ADOLFO CERVERA.

## CHAPTER 4.

**Showing the formation of the American Banana Company and the transfer of McConnell's plantations and the Romero concession to it.**

### PROSPECTUS OF THE AMERICAN BANANA COMPANY.

(4th February, 1904.)

The capital stock of the corporation is to be seven hundred and fifty thousand dollars (\$750,000), divided in shares of the face value of one hundred dollars (\$100) each.

One-third of the stock of said company will be issued in payment of the rights in the lands, tramway route and port situation heretofore acquired with a view to the organization of the company.

#### PROPERTIES.

The lands referred to in the foregoing paragraph are situated on the Sixaola River, in the Republic of Panama, between Bocas del Toro, Panama, and Port Limon, Costa Rica. There is no land superior and but little equal to that on the Sixaloa River for growing bananas, while the climatic conditions there are more favorable than to most localities, there being a great deal of rain and sun, which are essential for the successful growing of bananas.

While it is only now proposed to plant only about 3,000 manzanas (a manzana is little more than two acres), there is practically no limit to the extent of rich banana lands in this district. It is roughly estimated by an engineer who has surveyed the route for a railroad to connect the Sixaola River and the lands situated thereon with Gadocan Bay that there are 80,000 to 100,000 manzanas of fine banana lands in that district. Gadocan Bay, where an inside protected harbor is to be constructed, is situated about three miles north-west of the Sixaola River. The fruit will be transported by the railroad to the harbor, where it will be transferred directly from the cars to the vessels.

The greatest advantage in this situation is the fine shipping facilities afforded by the harbor and wharf facilities and because of the rich lands which lie so accessible to the port.

### EXPENDITURES.

The planting of the 3,000 manzanas of land, which work has now been under way for more than six months, will cost, including necessary buildings, approximately \$100,000; the twenty-five to thirty miles of railroad, including equipment necessary for the handling of the fruit, will cost not exceeding \$150,000; and the harbor improvements will, according to the estimates of Col. A. F. Wrotnowski and Mr. E. L. Corthell, cost not more than \$200,000; the remaining \$50,000 of subscriptions will be used as a working fund.

### PRODUCTIONS AND PROFITS.

It is variously estimated that such lands as those on the Sixaola River will produce from twenty-five to sixty bunches per manzana monthly. It is, we think, safe to estimate the production at about twenty-five whole bunches. By "whole" is meant nine-hand bunches or the equivalent. On that basis the monthly production of such lands would be 75,000 bunches, or 900,000 per annum.

During the last fiscal year of the Camors-McConnell Company, ended September 30, 1903, that Company's importations of bananas from Bocas del Toro showed an average net profit above all expenses of 9.98 cents per count bunch, and that in the face of very expensive competition. The previous year the average profit per count bunch was 25.60 cents, or an average for the two years of 17.89 cents. That company's profits for the last fiscal year of twelve months amounted to 100 per cent. on its capital of \$80,000 and 200 per cent. the previous fiscal year of thirteen months. Its profits for the first quarter of the present year amount to \$54,000, or at the rate of 250 per cent. per annum. The increased profits this year were, however, due largely, if not altogether, to the scarcity of fruit in Jamaica.

Fruit grown on the Sixaola River lands will, judging by that produced in the Changuinola district about ten miles away, where the class of land is practically the same, weigh about 15 per cent. more than that imported by the Camors-McConnell Company, or, say, eight or ten pounds more per count bunch. As the average price per hundred (bananas are now sold per hundred-weight) is about \$1.50, fruit grown in the Sixaola district should bring twelve to fifteen cents more per count bunch.

On account of the superior shipping facilities, much less handling of

the fruit will be required than at Bocas, where it is first handled either by rail or less convenient facilities and then transferred to lighters and towed alongside the ships. The fruit will, therefore, be in better condition, hence will command a higher price, say ten to fifteen cents per hundred, that being the usual difference between Limon and Bocas fruit. The Limon fruit is handled altogether by rail, as the Sixaola will be. The increased value of the Sixaola over Bocas will for that reason amount to fully six to nine cents per count bunch, as that fruit will average fully sixty pounds per bunch in weight. It will, we are confident, weigh nearer sixty-five pounds than sixty pounds. Furthermore, on account of the improved handling facilities, it is conservatively estimated that there will be a saving of ten cents per bunch in the cost aboard ship.

The importation of Bocas bananas by the Camors-McConnell Company for the past two fiscal years cost within a fraction of thirty-five cents gold per bunch on board steamers at the fruit port, considerable of which cost during the past fiscal year one dollar silver (forty cents gold), while a competing line was in operation, the normal price being sixty cents silver. It is confidently expected that the Sixaola fruit will be delivered aboard vessels at a cost of twenty-five cents gold. Limon fruit, which has for years brought more in the markets than any other, costs on an average of fifty cents aboard vessels, and we believe that the Sixaola fruit will be heavier and superior in carrying qualities, and for that reason should bring more money.

According to these estimates, it is reasonable to expect that, under similar general business conditions as those existing during the past two fiscal years of the Camors-McConnell Company, fruit from the Sixaola district will show a net profit of at least 45.89 cents per count bunch, and, should the annual shipments amount to 900,000 count bunches, the total profits on that basis will be \$414,010.

In arriving at the profit per count bunch, it will be observed that the lowest estimates have been considered in every instance, nor has the expensive competition that the Camors-McConnell Company contended with its last fiscal year been taken into consideration, though its net profit per count bunch was only 9.98 cents that year as against 25.60 cents the previous year.

The business can be increased to almost any extent and that without the necessity of any further expenditures on the harbor unless for additional wharves, which will cost but little. These figures will doubtless appear extravagant to any one not familiar with the possibilities

of the banana business, but they will bear investigation. The general business conditions of this country have been favorable for the past two years, and large profits are of course due to some extent to that fact.

Under the new conditions all elements of competition in securing cargoes will be eliminated, since all the fruit will either be grown by the company or controlled by it through its control of the shipping facilities.

It will be the policy of the company to pay liberal dividends out of the earnings and at the same time extend its planting interests.

H. L. McCONNELL.

MOBILE, February 4th, 1904.

CERTIFICATE OF INCORPORATION OF THE "AMERICAN  
BANANA COMPANY."

We, the undersigned, desiring to become a body corporate under the name and for the purposes hereinafter set out, do make and sign this certificate and declare:

1st. That the name of the corporation shall be the "American Banana Company."

2nd. The objects for which the corporation is formed are to plant, cultivate, export, and import, buy and sell, on its account and for others, fruit and other products to import, export, buy and sell on its account and for others, goods, wares and merchandise, and other personal property of every kind, and to charter, own, manage and operate steamboats, steamships and other water crafts, to construct, buy, own and operate railroads for the transportation of its own products and the product of others; to construct, improve and own piers, docks and similar terminal facilities and to manage, control and use the same, and to furnish the use thereof to others for a reward, and to do all things incidental to the several objects hereinabove set out.

3rd. The principal office of said corporation shall be in the City of Mobile in the state of Alabama.

4th. The amount of the total authorized capital stock shall be seven hundred and fifty thousand dollars, divided into seven thousand five hundred shares of the face value of one hundred dollars each.

The amount of the capital stock with which it will begin business will be one hundred and eighty-nine thousand, five hundred dollars (\$189,500.00).

5th. F. C. Horton, the Secretary and Treasurer of the corporation, is

hereby designated as the officer to receive subscriptions to the capital stock of the company, and his post-office address is Mobile, Alabama.

6th. The names and post-office addresses of the incorporators and the number of shares subscribed for by each are as follows:—

Name	Address	Amt. of Subscription
H. L. McConnell	Mobile, Alabama	\$70,000.00
P. J. Lyons	Mobile, Alabama	40,000.00
Gregory L. Smith	Mobile, Alabama	5,000.00
Phil. L. Muscat, Agent	Mobile, Alabama	1,000.00
Robert Hunter	Mobile, Alabama	5,000.00
W. L. Murdoch	Birmingham, Alabama	5,000.00
J. F. McGowin	Mobile, Alabama	20,000.00
John M. Cartwright	Birmingham, Alabama	5,000.00
Henry Piser	Mobile, Alabama	5,000.00
Harry T. Smith	Mobile, Alabama	2,500.00
Lee J. Zimmern	Mobile, Alabama	1,000.00
Frank P. Davis	Mobile, Alabama	5,000.00
G. Heustis Fonde	Mobile, Alabama	2,000.00
W. M. Cosby	Birmingham, Alabama	7,500.00
Muscatt & Lott	Mobile, Alabama	5,000.00
Joseph Gee, Agent	Mobile, Alabama	500.00
B. Daves, Agent	Mobile, Alabama	500.00
W. M. Marshall	Mobile, Alabama	2,000.00
E. F. Ladd	Mobile, Alabama	3,500.00
J. M. Ladd, Jr.	Mobile, Alabama	2,000.00
Henry C. MacEwan	Mobile, Alabama	1,500.00
Louis Donald	Mobile, Alabama	500.00

The names and post-office addresses of the directors and officers chosen for the first year are as follows: H. L. McConnell, President of the corporation, whose post-office address is Mobile, Alabama; P. J. Lyons, Vice-President of the corporation, whose post-office address is Mobile, Alabama; F. C. Horton, Secretary and Treasurer of the corporation, whose post-office address is Mobile, Alabama.

The names of the directors are: Gregory L. Smith, J. F. McGowin, P. J. Lyons, Robert Hunter, F. P. Davis, Henry Piser, Phil. L. Muscat, H. L. McConnell, whose post-office addresses are Mobile, Alabama, and W. M. Cosby, Zach. L. Nabers, W. L. Murdoch, whose post-office addresses are Birmingham, Alabama.

7th. The duration of the corporation shall be without limitation.

8th. The railroads that the corporation proposes to build will be in the

Republic of Panama and the termini thereof will be near the mouth of the Sixola River and a point in the interior near said river, but not yet determined. The Mobile Bay, Mobile River, and the Gulf of Mexico are the streams within the District of Alabama through which the corporation proposes to navigate. The corporation will be engaged in foreign commerce.

9th. The works of improvements as hereinabove stated that the corporation proposes to engage in will be situate in the Republic of Panama, and in the County of Mobile, State of Alabama.

IN WITNESS WHEREOF, we, the above-named incorporators, have hereunto set our hands this the 18th day of June, 1904.

PAT J. LYONS.	ROBERT HUNTER.
F. P. DAVIS.	M. L. MURDOCH.
HENRY C. MACEWAN.	JOSEPH GEE, Agent.
G. HEUSTIS FONDE.	HENRY PISER.
PHIL. L. MUSCAT, Agent.	W. M. COSBY.
MUSCAT & LOTT.	EDWIN WARLEY.
J. F. McGOWIN.	H. L. McCONNELL.
B. DAVES.	JNO. M. CARTWRIGHT.
JNO. M. LADD, Jr.	GREGORY L. SMITH.
HARRY T. SMITH.	ERNEST F. LADD.
W. M. MARSHALL.	LOUIS DONALD.
LEE J. ZIMMERN.	

STATE OF ALABAMA }  
COUNTY OF MOBILE }

Personally appeared before me, F. C. Horton, and being sworn, deposes and says that he is the person authorized by the incorporators hereinabove named to receive the subscriptions to the capital stock of said corporation, and that thirty-seven thousand nine hundred dollars (\$37,900.00) of the capital stock of said company has been paid in cash as follows:—

<i>Names</i>	<i>Amt. of Subscription</i>
H. L. McConnell	\$14,000.00
P. J. Lyons	8,000.00
Gregory L. Smith	1,000.00
Robert Hunter	1,000.00
Phil. J. Muscat, Agent	200.00
W. L. Murdoch, Agent	1,000.00

<i>Names</i>	<i>Amt. of Subscription</i>
J. F. McGowin . . . . .	\$4,000.00
John M. Cartwright . . . . .	1,000.00
Henry Piser . . . . .	1,000.00
Harry T. Smith . . . . .	500.00
Lee J. Zimmern . . . . .	200.00
Frank P. Davis . . . . .	1,000.00
G. Heustis Fonde . . . . .	400.00
W. M. Cosby . . . . .	1,500.00
Muscatt & Lott . . . . .	1,000.00
Joseph Gee, Agent . . . . .	100.00
B. Davis, Agent . . . . .	100.00
W. M. Marshall . . . . .	400.00
E. F. Ladd . . . . .	700.00
J. M. Ladd, Jr. . . . .	400.00
Henry C. MacEwan . . . . .	300.00
Louis Donald . . . . .	100.00

F. C. HORTON.

Subscribed and sworn to before me this the 20th day of June, 1904.

ROBERT H. McCONNELL,  
*Notary Public, Mobile County, Alabama.*

(NOTARY SEAL)

I, Price Williams, Jr., Judge of the Probate Court of Mobile County, hereby certify that the foregoing certificate of incorporation complies with the provisions of an act of the legislature entitled, "An act to confer and limit the powers of business corporations and to provide for their organization and regulation," approved October 2, 1903, and that the same has been registered in the book kept for the registration of such corporations, number 4, page 509-510-511-512.

June 21st, 1904. Filed in office for record June 21, 1904.

P. WILLIAMS, JR.,  
*Judge.*

STATE OF ALABAMA }  
MOBILE COUNTY } PROBATE COURT.

I, Price Williams, Jr., Judge of the Probate Court in and for said State, hereby certify that the within and foregoing Six pages contain a full, true, and complete copy of the Certificate of Incorporation of the American

Banana Company, as the same appears of record in my office in Incorporation Book No. 4, pages 509 to 512.

GIVEN under my hand and seal of office, this 17th day of October, 1904.

PRICE WILLIAMS, JR.,  
*Judge of Probate Mobile County,*  
by H. O. Haynie, Clerk.

ASSIGNMENT from H. L. McConnell to the American Banana Company.

(24th June, 1904.)

WHEREAS IT WAS AGREED By and between the promoters and original subscribers to the capital stock of the American Banana Company and the undersigned H. L. McConnell, that the capital stock of the said American Banana Company should be seven hundred and fifty thousand dollars (\$750,000.00) of which five hundred thousand dollars (\$500,000.00) should be paid for in cash by the subscribers thereto and the remaining two hundred and fifty thousand dollars (\$250,000.00) should be subscribed for by the said H. L. McConnell and paid for by his conveyance of the lands planted by him in the Republic of Panama on the east and west sides of the Sixola River, under and pursuant to his application filed with the Republic of Colombia prior to the formation of the Republic of Panama, and all of the rights accruing or to accrue, to the said H. L. McConnell, or to his assigns under such application; also the port facilities on Gadoan Bay Front and the lands surrounded thereby now cleared and fenced and all of the railroad rights of way secured by the said H. L. McConnell by clearing the same including the costs and legal expenses incident to obtaining said concession and rights, not, however, including the expense of clearing and planting said lands; provided, however, that the said H. L. McConnell shall not at any time receive, on account of his said subscription payable as aforesaid, more than such an amount of stock as shall be equal to fifty per cent. (50%) of the amount of the stock of the corporation then actually subscribed for and payable in money: Now, THEREFORE, in payment in full of the said subscription to two hundred and fifty thousand dollars (\$250,000.00) of the capital stock of said corporation made by the said H. L. McConnell and payable as aforesaid and issuable from time to time in proportion to the cash stock subscriptions, I, the said H. L. McConnell, hereby bargain, sell and convey, transfer, set over and assign to the said American Banana Company all of my right,

title and interest of every kind and description to the lands planted by me in the Republic of Panama, lying on the east and west sides of the Sixola River under the application made as aforesaid, to the Republic of Colombia, and of all the rights that the said McConnell may have, or be entitled to obtain under the application made by him to the Republic of Colombia before the formation of the Republic of Panama and also all port facilities at Gadocan Bay Front and lands surrounding the same now cleared and fenced, together with the railroad right-of-way secured by me by cutting timber therefrom, and I, the said H. L. McConnell, do further agree and bind myself not to obtain or be interested in any concession or right of any kind that will or may conflict or interfere with the rights or interests of the American Banana Company obtained or obtainable under the concessions and rights by this instrument vested in it and to execute in due form such other and further conveyances, transfers and assignments, and other instruments, and to do and perform all such other acts that I may be required by the said American Banana Company to execute, do and perform to fully invest the said American Banana Company with all of the rights and concessions which I, the said H. L. McConnell have obtained as aforesaid, or which may arise out of or be appurtenant to said concession or rights, and I hereby further grant and convey to John M. Ladd, J. M. Marshall and Joseph Gee, as a committee constituted and appointed by the by-laws of the American Banana Company, and to their successors, the exclusive and irrevocable power to vote, for a period of five years from the organization of said company, all of the stock which may be issued to me in consideration of the sale, transfer and assignment hereby made, upon any and all questions upon which said stock may be entitled to be voted.

IN WITNESS WHEREOF, I, the said H. L. McConnell, have hereunto set my hand and seal this the 24th day of June, A.D. 1904.

(Signed)      H. L. McCONNELL. (SEAL)

STATE OF ALABAMA, }  
COUNTY OF MOBILE. }

I, F. C. Horton, a Notary Public, in and for said state and county, hereby certify that H. L. McConnell, whose name is signed to the foregoing transfer and assignment, and who is known to me, acknowledged before me this day, that being informed of the contents of said transfer

and assignment, he executed the same voluntarily on the day the same bears date.

Given under my hand this 24th day of June, A.D. 1904.

(Signed) F. C. HORTON,  
*Notary Public, Mobile County, Alabama.*

INSTRUMENT OF TRANSFER from H. L. McConnell to the American Banana Company.

NUMBER ONE HUNDRED AND EIGHTY-FOUR (184).

(31st July, 1905.)

In the City of Boeas del Toro at the office in and for the Notarial Circuit of the Province of the same name in the Republic of Panama on the thirty-first day of the month of July in the year nineteen hundred and five, appeared personally before me, Adolfo Cervera, the Notary Public in and for the said circuit and the witnesses, Messrs. Roberto Eliot and Morris Charles Burke, men of responsible age, residence, of good character and with no impediment before the law to be such, Doctor Francisco Rodriguez C. as the legal representative of Mr. Herbert L. McConnell and of Mr. Otto F. Dolder, as it is stated in the powers of attorney presented to me, party of the first part and Mister Otto F. Dolder, party of the second part, manager of the American Banana Company, of whose representation there is a constancy in the archives of this office. They present to me a memorandum signed by both parties in the name of their constituents in order to cause the same to be executed as a Notarial deed. They also present to me the receipt of the Treasury as having paid the taxes for recording the same and the certificate of the same office stating that the property sold owes nothing for taxes. These last two mentioned documents are added to the body of this instrument so that they may be inscribed in every testimony which may be given out of this same one. The memorandum referred to literally reads like this: Mister Notary Public of the Circuit. I, Francisco Rodriguez Camacho, of responsible age, a lawyer and a resident of this city of Bocas del Toro, to you declare:

*First*, I have the power of attorney of Mister Herbert L. McConnell as stated in the instrument executed by you on the twenty-first of July of this year under the number one hundred and seventy-five (175) to the effect of selling and transferring certain pieces of property in the territory of this Republic to the American Banana Company.

*Second.* I am also the legal representative of Mister Otto F. Dolder as stated by instrument at your Notary on the twenty-first of July of this year, under the number one hundred and seventy-six (176) to the same effect of selling and transferring certain pieces of property situated in this territory to the American Banana Company.

*Third.* My constituents or Herbert L. McConnell and Otto F. Dolder possess and own conjointly the following pieces of real property: One banana plantation of about three thousand (3,000) manzanas\* which they acquired for having formed it themselves on uncultivated lands. This plantation is situated on both sides of the Sixola River from the 4th mile, more or less, coming from the mouth of the river at the Caribbean Sea and extends for a length of twenty-six (26) miles along the same river towards its source until reaching the thirtieth mile with a depth on both sides varying from two hundred meters where it is narrowest until one thousand meters where it is the widest. There are several wooden buildings with zinc roofs in this plantation and some materials for construction, a great deal of thatched houses for the laborers and employees, amounting in all, both kinds, to about forty buildings: ten head of cattle, ten head of pigs and several fowls. There are besides for the use and help of the said plantation the following floating vehicles a gasolene launch name "Sixaola," of thirty-six horse power, forty-five feet long by twelve wide and six feet depth; a gasolene launch name "Messenger" of eight horse power, thirty feet long, seven wide and five depth, three wooden lighters, one of them roof-covered which measures thirty-five feet long by twenty-four wide and the other two measure forty-five feet long by eighteen wide and thirty-five boats, canvas and smaller ones. There are also in the same plantation for the use and help of the same, several store-rooms with provisions (commissariats), furniture, tools, machinery, agricultural implements and tools of several kinds. My constituents possess also five iron cars. The above mentioned plantation is thus crossed through internally by the aforesaid river Sixaola and by the other sides is bound with waste lands. In the area of land in which this plantation is thus located and in the adjacent lands to it, my constituents have acquired according to the existing laws, rights of dominion as first working colonists, having built up houses and cultivated lands and besides they have made improvements of great magnitude and consideration such like the drawing of plans, opening of roads, the building of ports, the planting and cultivation of several kinds of fruit-

\* A manzana is a little more than two acres.

trees, drainage of swamps, erection of bridges and causeways the making of fences and enclosures. Then pursuant, I, Francisco Rodriguez Camacho, a resident of this city and exercising the aforesaid faculties to me conferred by my constituents as stated in the legal instruments presented to you and to be incorporated in this deed and following the instructions given to me by my constituents, do sell, deliver up and transfer really and forever, the plantation thus specified and described with all its appurtenances before mentioned of vehicles, buildings, roads, furniture, animals, machinery, tools, utensils, materials and improvements of every kind to the American Banana Company for the sum of twenty-five thousand dollars (\$25,000.00) American gold which my constituents have received of the purchasing company to their entire satisfaction. I sell, deliver up and transfer in the same manner to the above mentioned company and in the name of my constituents for the same sum or the price of twenty-five thousand dollars (\$25,000.00) gold, all the rights that my constituents have acquired upon the adjacent lands, according to the existing laws of the Republic of Panama. I sell, deliver up and transfer besides, to the same company and for the same price, all the rights that my constituent Herbert L. McConnell has or may have in virtue of the cession that Mr. Ricardo Roman Romero made to him by notarial deed, number one hundred and seventeen (117) on the first day of May of the year nineteen hundred and three, of the contract number forty-four made the second of April nineteen hundred and three between the Government of the Department of Panama and the said Ricardo Roman Romero for the privilege or concession to build a steam tramway between the anchoring ground at Gandocan in the Atlantic shore of the Republic of Panama and the left side of the river Sixaola, and lastly, I grant and transfer to the purchasing company any other rights that my constituents have or may have proceeding from the cession and contract just spoken or by virtue of the works done on both sides of the river Sixaola and the port of Gandocan.

The American Banana Company accepts any or all the terms of this sale, grant and transfer referred to in this memorandum with all the obligations proceeding from the contract for the building of a steam tramway, the said contract to be fulfilled in all its conditions by the purchasing company as soon as he removed the accidental difficulties which have caused the suspense of the work by the contractors.

In testimony of the said acceptance, the manager of the corporation "American Banana Company" in this City, Mister Otto F. Dolder, of

which faculty there is a constancy in the archives of this Notary, sign herein with me. Please, Mister Notary, execute in your Protocol of legal deeds of this current year, one in which it be stated all that which has been stated before and add the clauses required by law for its full validity. Bocas del Toro, the 26th of July, 1905. O. F. Dolder: Francisco Rodriguez C.

This instrument was read by me to both parties before the witnesses above mentioned who found it correct and approved the same, after having been well acquainted with its contents. They were advised of the duty to make register the first copy of this instrument delivered to them at the Record House in this city within sixth days from to-day for the full legal validity of the same, and not to cause any overcharges for the tax of recording the same. All who have intervened in the execution of this instrument sign before me, a Notary Public, who attests it.

FRANCISCO RODRIGUEZ C.      O. F. DOLDER.  
MORRIS CHARLES BURKE.      R. ELIOT.

*The Notary Public, ADOLFO CERVERA.*

Follows the copy of the Power of Attorney in favor of Francisco Rodriguez C. by Otto F. Dolder, substituting the power of attorney given to him by Herbert L. McConnell.

(No. 175 dated the 21st of July, 1905.)

Then follows the copy of the Notarial deed number 175 of the 21st of July of 1905, power of attorney in favor of Dr. Francisco Rodriguez C. by Otto F. Dolder.

Come next the receipt and the certificate of the Treasury, and the attesting by the Notary, and lastly the certificate of the recorder stating that this instrument has been registered in the book No. One 2nd volume, at the pages 114-120 entry No. 97 in August the third of 1905.

Translated from the Spanish by the Undersigned.

ROBERT URICOECHEA,  
*Official Interpreter.*

BOCAS DEL TORO, the 7th August, 1905.

## CHAPTER 5.

Containing some of the legal proceedings in the United States District and Circuit Courts in Alabama and the injunctions issued against McConnell.

(OPINION AUGUST 31ST, 1905.)

140 Federal Reporter 987.

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

CAMORS-McCONNELL COMPANY

No. 238

v.

Bill in Equity.

HERBERT L. McCONNELL.

MESSRS. HOWE, SPENCER & COCKE, and R. H. & N. R. CLARKE, *for Complainants.*

MESSRS. GREGORY L. & H. T. SMITH, *for Defendant.*

*On Motion for Preliminary Injunction.*

TOULMIN, *District Judge.*

The averments as to the facts of this case, as set out in the bill of complaint, are substantially admitted by the Defendant, with the exception that he denies that the contract of January 27th, 1900 (Exhibit III. to the answer) was made upon the terms set out in the contract of December 6th, 1899 (Exhibit A to the bill), or that it had any reference to the provisions of said last-named contract; and that the provisions of Article 5 therein were for the use, benefit and protection of the complainant. And Defendant avers that, at the time the contract of December 8th, 1899, was made, it was understood that the United Fruit Co. was the real party interested in said contract, and that the provisions of Article 5 therein were made for its benefit and protection.

It does not appear from anything now before the Court that the United Fruit Co. has ever availed itself of the provisions of Article 5, referred to;

that any consideration therefor ever passed or was intended to pass from it to the defendant, or that said Company ever complained of the violation of said contract by the Defendant. The United Fruit Co. is not a party to this suit, but it appears that it is a stockholder of the Camors-McConnell Company.

I think that, on the bill, answer and evidence, as now presented, there can be no doubt that the contract of December 8th, 1899, was made in contemplation of the formation of the corporation of Camors-McConnell Co., and of its adoption by such corporation when organized; that it was adopted by said corporation, and that the contract of January 27th, 1900, transferring the property, effects, business and good will of Camors-McConnell & Co., was made in pursuance of, and upon the terms set out in said contract of December 8th, 1899; and that the Camors-McConnell Co. has performed the obligations thereby assumed by it, and is entitled to all the benefits accruing under said contracts.

But the Defendant contends that the real purpose of the transaction in question was to suppress existing competition between the business conducted by the co-partnership of Camors-McConnell & Co. and the United Fruit Co., and to combine said business with corporations and companies confederated together to monopolize and control the business of buying, importing and selling fruit throughout the United States, and that the contract sought to be enforced is, therefore, illegal and void.

The Defendant further contends that the complainant and the United Fruit Co. are conducting their business in violation of the laws of the United States, and that at the time the contract involved in this suit was made and entered into it was for the purpose of aiding and facilitating the United Fruit Co. and the Camors-McConnell Co. and other companies in combination with them, in conducting their business in violation of the laws of the United States; that said contract was made in restraint of trade and commerce among the several states and with foreign nations, and for the purpose of forming and maintaining a combination in the form of a trust, and for that reason it is illegal and not enforceable.

The covenant here sought to be enforced is that wherein the Defendant agreed that he would not "either individually or by or through a corporation jointly or severally, directly or indirectly, engage in the growing or importing or selling of tropical fruits or any other business directly or indirectly in competition with the new corporation." CAMORS-MCCONNELL Co.

The test of the legality and validity of this covenant is whether the main

contract is legal. If the contract is illegal, affirmative relief against it will not be granted. No court will lend its assistance, in any way, towards carrying out the terms of an illegal contract. *Spring Co. v. Knowlton*, 103 U. S. 49; *McMullen v. Hoffman*, 174 U. S. 639; *Harriman v. Northern Securities Co.*, 197 U. S. 244.

A contract may, in a variety of ways, affect interstate commerce and yet be entirely valid because the interference produced by the contract is not direct. The fact that trade and commerce might be indirectly affected is not sufficient. The effect must be direct and proximate. *Hopkins v. U. S.*, 171 U. S. 578; *U. S. v. E. C. Knight Co.*, 156 U. S. 1; *Northern Securities Co. v. U. S.*, 193 U. S. 198.

The indirect effect of the contract under consideration might be to enhance the price of tropical fruit, but the contract itself would not directly or necessarily for that reason be in restraint of interstate trade or commerce. While it might tend to restrain such trade the restraint would be an indirect result.

In the sale of a going business or concern, with the good will attached, and as ancillary and incident thereto, the seller enters into a covenant with the buyer that he would not compete with him in any way as to diminish the value of the property or business sold, although such covenant may be in partial restraint of trade, it should be upheld and enforced. *Harrison v. Glucose Sugar Refining Co.*, 116 Fed. 307; *Nat. Enameling & Stamping Co. v. Haberman*, 120 Fed. 415.

In *U. S. v. Addyston P. & S. Co.*, 85 Fed. 281, the Court said: "Covenants in partial restraint of trade are generally upheld as valid when they are agreements by the seller of property or business not to compete with the buyer in such way as to derogate from the value of the property or business sold."

An agreement, as incidental to a sale of property as a business, that the seller would not enter into a competing business, is valid, notwithstanding it is in restraint of trade to that extent. *A. Booth & Co. v. Davis et al.*, 127 Fed. 875; *S. Jarvis Adams Co. v. Knapp*, 121 Fed. 34; *U. S. v. Addyston P. & S. Co., supra*; same case, 175 U. S. 211.

The sale and transfer by a person of his property and good will to another cannot be repudiated on the ground that the purchaser acquired the property for the purpose of obtaining a monopoly of the business, and in pursuance of an illegal combination in restraint of trade. *Metcalf v. Am. School Furniture Co.*, 122 Fed. 115.

In *Diamond Match Co. v. Roeber*, 106 N. Y. 473 (60 Am. Rep. 464), the

Court said: "We are not aware of any rule of law which makes the motive of the covenantee the test of the validity of such a contract. On the contrary, we suppose a party may legally purchase the trade and business of another for the very purpose of preventing competition, and the validity of the contract, if supported by a consideration, will depend upon its reasonableness as between the parties."

*Connelly v. Union Sewer Pipe Co.*, 184 U. S. 547; *Knapp v. Jarvis Adams Co.*, 135 Fed. 1008.

In the case of an unlawful combination of the nature asserted here, the remedy is by well-recognized and direct proceedings.

The fact, if it be a fact, that the complainant is one of an association or combination of corporations, which constitutes a monopoly, and that its general business is illegal, as one in restraint of trade, cannot be invoked collaterally to affect in any manner its independent contract obligations or rights. *Yarborough v. Avant*, 66 Ala. 526; *Ware v. Curry*, 67 Ala. 274; *Johnson v. Smith*, 70 Ala. 108.

It is held that one who voluntarily and knowingly deals with the parties so combined cannot on the one hand take the benefit of his bargain, and on the other defend against the contract on the ground of illegality of the combination. *Harrison v. Glucose Sugar Refining Co.*, supra; *Dennehy v. McNulta*, 86 Fed. 825.

On the case as now presented, and assuming that there was a combination or agreement between the complainant and other corporations, which was prohibited by law as being in restraint of trade, I think that the contract in controversy between complainant and defendant was collateral to the said unlawful agreement or combination. Moreover, I do not think that the direct or necessary operation of said contract tends to restrain interstate or international trade or commerce, or to create a monopoly therein.

My opinion, therefore, is that there is nothing illegal in the consideration and performance of said contract, and that the defendant should not be permitted to repudiate it because the association or complainant with other corporations is illegal.

But it is urged on the part of the defendant that, even if the contract in controversy was, as a separate and independent contract, a lawful one, it was a part of an unlawful scheme to monopolize interstate trade and commerce in tropical fruit, and it thereby became unlawful.

It is true there are some cases in which Courts have held that even the fact that a contract is one for the sale of property or of business and good

will has not saved its validity, if it was shown that it was only a part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. It was held that in those cases the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. *U. S. v. Addyston P. & S. Co.*, supra.

I think it will be found that the cases referred to were direct proceedings against the alleged monopolies wherein it was sought to enjoin them. There are no provisions in the contract here sought to be enforced, which refer to the restrictions of trade or to the regulation of the importation, sale and prices of fruit, evidencing an intent to establish a monopoly in such trade.

In the case of *Swift & Co. v. U. S.*, 196 U. S. 375, a bill was filed by the U. S. to enjoin the defendants' commission of alleged violations of the law "to protect trade and commerce against unlawful restraint and monopolies." It charged a combination of a dominant proportion of the dealers in fresh meats throughout the U. S. to do and not to do certain specified things, with the intent to restrain competition among themselves, and to monopolize the supply and distribution of fresh meats throughout the U. S. The case was submitted on bill and demurrer thereto. The Court said it seemed to them "that this allegation of intent colored and applied to all the specific charges of the bill, and intended to allege successive elements of a single connected scheme." In the course of the opinion the Court further said: "The constituent elements are enough to give to the scheme a body. . . . Moreover, whatever we may think of them separately when we take them as distinct charges, they are sufficient as elements of a scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. The statute gives this proceeding against combinations in restraint of commerce among the states and against attempts to monopolize the same. Intent is almost essential to such combination and is essential to such an attempt. Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance, the monopoly, . . . an intent to bring it to pass is necessary in order to produce a dangerous probability that will happen. But when that intent and the consequent dangerous probability exist, the statute . . . directs itself against the dangerous probability as well as against the completed result.

The charge is not of a single agreement, but a course of conduct intended

to be continued. Under the act, it is the duty of the Court, when applied to, to stop the conduct. . . . The most innocent and constitutionally protected of acts or commissions may be a step in a criminal plot, and if it is a step in a plot neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law. 196 U. S. 375.

As I understand these expressions of the Court, they amount simply to a declaration that conduct agreed upon to effect an unlawful object may be unlawful, and that the Court, when applied to in a direct proceeding therefore, will stop such conduct by injunction, as well as punish, in proper criminal proceedings, the unlawful act when completed, notwithstanding it may have been accomplished by separate acts, ever so innocent in themselves. Being steps in a criminal plot or scheme, bound together by a common intent, their innocence is not sufficient to prevent the punishment of the completed act.

I do not think the decision in the Swift case has any application to this proceedings.

The Defendant further claims that the complainant has entered into a combination with various other importers of fruit for the purpose of acquiring a monopoly in the importation and sale of the same, and that the contract in question was to aid and facilitate that purpose, and he insists that the Court should for that reason refuse to enforce such contract; and he invokes the maxim that he who comes into a Court of equity must do so with clean hands.

The combination referred to may be an unlawful one, but the proposition that the defendant, while violating a contract made with the complainant, is entitled to defeat a suit brought to enforce such contract because the complainant is carrying on its business in an unlawful manner as a monopoly seems to me to be unwarranted. If the complainant has brought suit against the Defendant for a breach of contract, or violation of its alleged rights founded upon the combination, then it might be pertinent to inquire into the character of the combination, and ascertain whether the Court would enforce any rights growing out of it. *Strait v. Harrow Co.*, 51 Fed. 819; *Edison Electric Light Co. v. Sawyer Man Electric Co.*, 53 Fed. 598.

Whenever it is necessary for the Plaintiff to prove an unlawful combination or agreement in order to recover, no recovery or relief can be had. A contract connected with and growing out of an illegal act cannot be enforced. *McMullen v. Hoffman*, 69 Fed. 515.

Such, in my opinion, is not the case at bar as now presented.

"The rule that one coming into Court of equity must come with clean hands is confined to the conduct of the party in the matter before the Court, and not to matters *aliunde*. Courts will not refuse redress to the suitor because his conduct in other matters not then before the Court may not be blameless. It is enough if the suitor shows he has acted justly, fairly and legally in the subject-matter of the suit." The inequity must have been in regard to the Defendant himself and must have been done in regard to the matter in litigation." *Bonsack-Mach. Co. v. Smith*, 70 Fed. 386, and authorities therein cited; *Liverpool & L. & G. Ins. Co. v. Clunie*, 88 Fed. 160; *Knapp v. S. Jarvis Adams Co.*, 135 Fed. 1008.

The maxim of equity to which Defendant refers contemplates some fraud or misconduct on the part of complainant in regard to the transaction which is the subject of controversy. "It must be evil practice or wrong conduct in the particular matter or transaction in respect to which judicial protection or redress is sought." Authorities, *supra*; 1 Pom. Eq. Jur. 399.

"It is well settled that the granting of a provisional injunction rests in the sound discretion of the trial court, and that it is not necessary that the Court should, before granting it, be satisfied from the evidence before it that the Plaintiff will certainly prevail upon the final hearing of the cause. On the contrary, "a probable right and a probable danger that such right will be defeated, without the special interposition of the court, is all that need be shown as a basis for such an order." *Sanitary Works v. California Reduction Co.*, 94 Fed. 693; *Georgia v. Brailsford*, 2 Dall. 402; 1 High on Inj., 4.

"If there is one thing more than another which is essential to the trade and commerce of this country, it is the inviolability of contracts deliberately entered into; and to allow a person of mature age, and not imposed upon, to enter into a contract, to obtain the benefit of it, and then to repudiate it and the obligation which he has undertaken, is *prima facie*, at all events, contrary to the interests of any and every country."

"In all cases" as that now before the Court, "Courts have uniformly enjoined the delinquent party from engaging in the business from which he has agreed to refrain, and from disclosing the secrets of the business which he has thus acquired."

*Harrison v. Glucose Sugar Refining Co.*, 116 Fed. 310, and authorities therein cited.

I am of opinion that the complainant is entitled to the injunction restraining H. L. McConnell from a breach of his contract with the com-

plainant as set out in the bill of complaint, and an injunction will be issued in accordance with the prayer of said bill, except as to so much thereof as prays that Defendant be enjoined from becoming or remaining a stockholder of the American Banana Company, as to which an injunction is now denied.

Let a decree be entered and a preliminary injunction issue in accordance with the foregoing opinion on complainant's giving bond, with security to be approved by the clerk of the Court, in the sum of One Thousand Dollars, conditioned as required by law, and the rules of Court.

140 Fed. Rep. 987.

Filed 30 day of Octo., 1905.

Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT.

<p>HERBERT L. McCONNELL,  <i>Appellant,</i>          v.          CAMORS-McCONNELL COMPANY,  <i>Appellee.</i></p>	<p>No. 1512.</p>
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*Appeal from the Circuit Court of the United States for the Southern District  
of Alabama.*

Before PARDEE and SHELBY, *Circuit Judges*, and MAXEY, *District Judge*.

*Per Curiam.*

Without examining this case now as to its merits, the Court has concluded that it is not advisable or proper to interfere with the discretion of the trial Court in the granting of the temporary injunction.

Adhering to the construction we have heretofore given the act allowing appeals in such cases, we affirm the judgment of the Circuit Court.

*Lehman v. Graham*, 135 Fed. 39.

*Railroad Co. v. Rosenbaum*, 130 Fed. 110.

*Kerr v. New Orleans*, 126 Fed. 920.

*Massie v. Buck*, 128 Fed. 27.

HERBERT L. McCONNELL,  
v.  
CAMORS-McCONNELL COMPANY.

No. 1512.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellant, Herbert L. McConnell, and the sureties on the appeal bond herein, H. P. Vass, Henry C. McEwan and H. Piser, be condemned to pay the costs of this cause in this court, for which execution may be issued out of said Circuit Court.

Oct. 30, 1905.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH  
CIRCUIT.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing 2 pages numbered from—to—, inclusive, contains a true copy of the opinion and decree of the court, in the case of Herbert L. McConnell, No. 1512 *versus* Camors-McConnell as the same remains upon the files and records of said United States Circuit Court of Appeals.

(SEAL) In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals, at the City of New Orleans, Louisiana, this 19th day of February, A.D. 1906.

CHARLES H. LEDNUM,  
*Clerk of the United States Circuit Court  
of Appeals for the Fifth Circuit.*

THE CAMORS-McCONNELL CO.  
vs.  
HERBERT L. McCONNELL.

No. 238.

United States Circuit Court,  
Eastern District of Louisiana.  
In Equity.

THE DEPOSITION OF JOHN B. CAMORS, witness called on behalf of the complainant, taken before Henry J. Carter, Esq., Clerk of the United States Circuit Court, on the 18th day of January, 1906, at the office of said clerk, New Orleans, La., by consent, all formalities as to the mode of taking such deposition and the signature of the witnesses to same being waived.

## APPEARANCES.

MR. WALKER B. SPENCER, *Solicitor for complainant.*  
MR. GREGORY L. SMITH, *Solicitor for defendant.*

JOHN B. CAMORS, witness sworn and examined on behalf of complainant, testified as follows:—

## DIRECT EXAMINATION.

By MR. SPENCER:

Q. Please state your full name, your age and your residence. A. My name is John B. Camors. I am in my sixty-ninth year, and I reside in New Orleans.

Q. What is your business? A. Well, I am in the commission business,—flour especially.

Q. Were you ever, at any time, engaged as a member of a partnership in the importation from Central America and the sale in the United States of bananas and other tropical fruits? A. Yes, sir.

Q. Of what partnership or partnerships were you a member of that were engaged in such business at any time? A. First I was by myself, —J. B. Camors and Company; second, I went with Camors, McConnell and Company.

Q. When you were engaged in the banana and tropical fruit business under the name of Camors and Company, where did you operate in Central America? A. I operated a little everywhere, in Costa Rica, in Colombia and in Honduras.

Q. What part of Colombia did you operate in? A. Well, Bocas del Toro.

Q. Which is now in Panama, I believe? A. Yes, sir.

Q. When did you first engage in the tropical fruit business under the name of Camors and Company? A. I could not tell exactly, but you know it has always been J. B. Camors and Company for the last forty-five years, and it became Camors and Company about ten years ago.

Q. Subsequently, I understand, you engaged in that business under the firm name of Camors, McConnell and Company? A. Yes, sir.

Q. Can you state who were the parties that constituted the firm of Camors, McConnell and Company, or that were interested in that firm? A. Yes, sir, there was Kroesman, Braden and Company, Mr. H. L. McConnell, the United Fruit Company, and us.

Q. I mean in the Camors, McConnell and Company, the partnership? A. Well, that is it, Kroesman, Braden, McConnell, I, and the United Fruit Company.

Q. Were the Weinbergers interested in the Camors, McConnell and Company, Jacob, Louis and Charles? A. At the beginning they were, but they sold out.

Q. Now, did the United Fruit Company have any interest in the partnership of Camors, McConnell and Company, before the organization of Camors-McConnell Company? A. No, sir.

Q. Well, then, I merely want the names of the persons who composed the partnership of Camors, McConnell and Company? A. I do not recollect of any others.

Q. Except that the United Fruit Company had no interest at that time? A. Had no interest.

Q. Do you know whether or not Mr. Herbert L. McConnell, prior to the formation of the partnership of Camors, McConnell and Company, had been engaged in the banana and tropical fruit business? A. I think he had, but I do not recollect, I could not say exactly because he was in Mobile, and I was in New Orleans.

Q. Did you ever hear of the Bocas del Toro trading Company or some such concern of that name? A. No, sir. It might have been in existence, but I do not recollect it.

Q. How did you happen to form a partnership with Mr. McConnell to engage in the banana business? A. Well, he had some interest in Bocas himself at that time.

Q. What was he doing down there, do you know? A. I don't know. He had some interest in Bocas at that time. We had some, and we joined together.

Q. Don't you remember or recall whether Mr. McConnell was engaged in the fruit business before you went in partnership with him? A. I think he was, but you know at the time this thing happened I was in Europe because we had an interest there in Port Limon, in Costa Rica, and we sold out that interest in Costa Rica, and we kept the Bocas del Toro and the Bocas del Toro interest, we went with Mr. McConnell.

Q. Who made the arrangements that culminated in the formation of the partnership with Mr. McConnell? A. I think it was my son Victor.

Q. After you went in partnership with Mr. McConnell, where was the firm of Camors, McConnell and Company to get the bananas and tropical fruit it imported into the United States? A. Get it in Bocas del Toro.

Q. Through what ports in the United States did they import those bananas? A. Generally New Orleans and Mobile.

Q. Did they ever, to your knowledge, import fruit through any other ports? A. I think a couple of times they went to Baltimore and Philadelphia.

Q. Where did they sell the fruit which they imported into the United States? A. All over the United States.

Q. Did they enjoy a good business? A. Yes, sir.

Q. Were the people who were interested with you in the firm of Camors, McConnell and Company well known in Central America? A. Perfectly, they had a good reputation.

Q. Were any of them residents of Central America? A. Yes, sir, Kroesman and Braden.

Q. Do you know whether Mr. McConnell was well known in Central America, in Bocas? A. He must have been well known, he had been there several times.

Q. He had been doing business there some time? A. Yes, sir, he was well known, sure.

Q. What was the financial standing of the people that composed the firms of Camors, McConnell and Company? Were they men of large means or men of small means? A. Well, more than sufficient, much more than sufficient, large means.

Q. You are a man of considerable means? A. I have a little.

Q. Don't be modest. I want you to state—I mean to say you are a man of considerable means? A. Yes, sir.

Q. How about Kroesman, Braden and Company, are they people of means? A. They are people of means, too, judging by the way they operate.

Q. And the Weinbergers, were they people of means? A. I couldn't tell as much about them, but I think they were well off at that time.

Q. And Mr. McConnell? A. Mr. McConnell also. He was the youngest of the crowd, I think.

Q. I would ask you to state whether or not the Camors-McConnell Company had a good business? A. *Yes, sir, we had a very good business.*

Q. What was the reputation of it for business integrity? A. *First class.*

Q. Did you consider the firm of Camors, McConnell and Company had any good will connected with their business? A. Oh, yes.

Q. In the bill of complaint in this case, Mr. Camors, it is alleged that the tangible assets of the firm of Camors, McConnell and Company was about \$30,000, but that as a matter of fact that partnership received the sum of \$50,000 for the sale of their property, business and good will to the Camors-McConnell Company. What was that extra \$20,000 paid for? A. *For the good will.*

Q. The contract which is sued on in this case, Mr. Camors, which was made between Mr. Andrew W. Preston the one part and the various parties interested in the firm of Camors, McConnell and Company on the other part, stipulated, among other things, that the Camors-McConnell Company, the corporation, should issue, in payment of the business and good will which it purchased from the firm, certain shares of stock. Do you know whether those shares of stock were delivered to and received by the members of that firm, Camors, McConnell and Company? A. Yes, sir.

Q. Do you know whether the Camors-McConnell Company carried out all of the agreements which it was stipulated in here they should carry out, towards the members of the firm of Camors, McConnell and Company? A. *They were carried out until lately.*

Q. In what respect were they broken lately? A. *Because it was agreed that all the good will was to belong to Camors-McConnell Company, and no one else, and—*

Q. How was that broken? A. *Mr. McConnell went out of the line.*

Q. In every other respect has that contract been complied with by the parties to it? A. Yes, sir.

Q. For whose benefit was the stipulation made that you and Mr. McConnell and the other parties interested in this partnership should not go into business in competition with the Camors-McConnell Company?

OBJECTION. MR. SMITH: Defendant objects to the question as calling for the opinion of the witness and not for the facts.

A. *It was for the benefit of the Camors-McConnell Company, for no one of us, we all had to stay there.*

Q. Why was this company that was formed called the Camors-McConnell Company?

OBJECTION. MR. SMITH: Defendant objects to that question as calling for the opinion of the witness as to the motives of the parties.

A. *Because our name was best known in the country amongst the people we were doing business with.*

Q. Who was the first President of the Camors-McConnell Company?

A. Mr. McConnell.

Q. How long did he remain President? A. I could not tell, about a year and a half.

Q. Do you know what brought about that, why he ceased to be President? A. Just because of his stepping out of the company.

Q. How do you mean by his stepping out of the company? A. Going and doing what was agreed not to be done, going in the fruit business in another way.

Q. Do you mean in competition with the Camors-McConnell Company? A. Yes, sir.

Q. He remained President then until he broke his contract? A. Yes, sir.

Q. *Did Mr. McConnell have any knowledge or experience in the banana business that was valuable to the Camors-McConnell Company?* A. Yes, sir.

Q. Who was the active Manager of the business of the partnership of Camors, McConnell and Company? A. At that time, at first, it was Mr. McConnell himself.

Q. You are now the present President of the Camors-McConnell Company? A. Yes, sir.

Q. And you were the senior member of the firm of Camors, McConnell and Company? A. Yes, sir.

Q. When did you first learn that Mr. McConnell was breaking his contract and going into business on his own account in competition with the Camors-McConnell Company? A. I could not tell exactly what time, but I found out as soon as he started to buy lands over there and plant bananas.

Q. Did you remonstrate with him? A. I told him at that time I thought he had such a good thing with us I did not understand his idea of going out of us.

Q. Did you object to his breaking his contract? A. I told him he had no business to do that. I couldn't do anything else.

Q. Were you aware of the fact, and did you consent to Mr. McConnell using the funds of the Camors-McConnell Company, its lighters, its ships, for the purpose of conducting his private enterprise? A. *I was not aware of it, and, had I been aware of the fact, he would never have done it.*

OBJECTION. MR. SMITH: Defendant objects and moves to rule out so much of the answer as states "if I had been aware of the fact, he would never have done it," because it is incompetent testimony, calling for the opinion and conclusion of the witness.

Q. What do you mean by saying that, if you had been aware of it, he never would have done it? A. *Because I would have stopped it; I would not have allowed it.*

OBJECTION. MR. SMITH: Defendant objects to the answer upon the ground previously stated.

Q. Did Mr. McConnell have any part in building up the business of Camors, McConnell and Company and its good will? A. *Oh, yes.*

Q. Was he not the active Manager of that business? A. *He was, at first.*

Q. I would ask you to state whether you know, generally, where the business that Mr. McConnell's new company, the American Banana Company, will be carried on? A. Well, Mobile is what I understand.

Q. Is the port of entry? A. Yes, sir.

Q. Now, where do they contemplate getting their bananas from? A. *From exactly where we get ours.*

Q. Would the business conducted by the American Banana Company be in competition with the business of the Camors-McConnell Company? A. *Why, of course it would be, in direct competition.*

Q. Do you know how Mr. McConnell happened to become President of the Camors-McConnell Company? A. Well, he had stock and he was

occupied in that business, you know, he was active, doing that business actively, and he thought he would keep on.

*Q.* Did he want to be President, do you know? *A.* I suppose he did because he got it. There was no objection to him.

*Q.* I would ask you to state whether or not, so far as the extent of territory covered, places where the fruit is bought and the places where the fruit is sold, there is any difference between the business as formerly conducted by Camors, McConnell and Company and the business as it is now conducted? *A.* Is there any difference?

*Q.* Is there any difference or is it the same business? *A.* Same business.

*Q.* Do you know whether the Weinbergers had any business in Central America? *A.* Yes sir.

*Q.* Kroesman, Braden and Company you say resided in Central America? *A.* They resided there.

*Q.* And Mr. McConnell had been engaged in business in Central America? *A.* Yes, sir, and was living in Mobile.

CAMORS-McCONNELL Co.  
v.  
HERBERT L. McCONNELL.

No. 238.

In equity.

Having examined and duly considered the pleadings and evidence in this cause I am of opinion that the complainants are entitled to relief, and that the defendant should be enjoined from remaining an officer of the American Banana Company, and from managing, directing or controlling its business or affairs, and otherwise from directly or indirectly engaging in the growing, importing or selling of tropical fruits in competition with complainants, as prayed for in their bill of complaint. A decree will be entered accordingly.

On the motion to suppress certain portions of the testimony in the cause by both complainants and defendant, on the ground of irrelevancy and immateriality, and also as illegal and incompetent because hearsay, I make no special ruling, as, in my opinion, unnecessary.

There is some evidence which is irrelevant and immaterial to the issues made by the pleadings. This I have disregarded in the consideration

of the case except so far as it may have tended to affect the value of or weight to be given to the testimony of the particular witness to which the objection was made; and such evidence as I deemed incompetent because hearsay I did not consider at all in reaching a conclusion in the case.

HARRY T. TOULMIN,  
*Judge.*

Rendered and filed June 9, 1906.

RICHARD JONES,  
*Clerk.*

CAMORS-McCONNELL COMPANY,  
*Complainant,*  
v.  
HERBERT L. McCONNELL,  
*Defendant.*

In United States Circuit Court  
for the Southern District of  
Alabama.

In Equity. No. 238.

Let the following decree be enrolled in this cause:

This cause coming on to be heard for a final decree upon the pleadings and the proof, and the same having been argued by counsel for the respective parties and being duly considered and understood by the court, it is considered that the complainant is entitled to the relief prayed by its amended bill of complaint in this cause.

It is therefore adjudged and decreed that the defendant Herbert L. McConnell be and he is hereby perpetually restrained and enjoined from being an officer of the American Banana Company, and from managing, directing or controlling its affairs, and otherwise from directly or indirectly, either individually or by or through a corporation engaging in the growing of tropical fruits in competition with complainant, or in the importing or selling of tropical fruits anywhere in the United States in competition with complainant or in any other business in competition with complainant, the Camors-McConnell Company, until after said Company shall have ceased the active continuance and prosecution of the business of importing and selling such fruit, or until it has failed to show a profit for any calendar year after the year 1899. It is ordered that a writ of injunction issue to said defendant in accordance with this decree.

Let defendant McConnell pay all the costs which have accrued in this cause, for which let execution issue.

Done in term time this 9th day of June, 1906.

HARRY T. TOULMIN,  
*Judge.*

Filed June 9, 1906, and entered on minutes, page 429.

RICHARD JONES,  
*Clerk.*

CERTIFICATE.

I, Richard Jones, Clerk of the Court aforesaid, do hereby certify that the above is a true copy of the original decree on file and of record in my office as such clerk in the cause aforesaid.

Witness my hand and seal at said Court this June 9, A.D. 1906.

RICHARD JONES,  
*Clerk.*

(SEAL)

PERPETUAL INJUNCTION.

UNITED STATES OF AMERICA.

CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA, FIFTH JUDICIAL DISTRICT CIRCUIT, AT MOBILE, ALABAMA.

May Term, A.D. 1906.

In Equity. No. 238.

CAMORS-McCONNELL COMPANY

*v.*

HERBERT L. McCONNELL.

The President of the United States,

To said HERBERT L. McCONNELL—Greeting:

WHEREAS, at the present term of Court on the 9th day of June, A.D. 1906, the Court made and entered a decree in the above cause granting to the complainant and said Camors-McConnell Company a perpetual injunction against the defendant, said Herbert L. McConnell, and directed that

a writ of injunction issue accordingly, a true copy of said decree is hereto attached;

Now, therefore, pursuant to and in accordance with said decree, you, the said Herbert L. McConnell, are hereby perpetually restrained and enjoined from being an officer of the American Banana Company, and from managing, directing or controlling its affairs, and otherwise from directly or indirectly, either individually or by or through a corporation, engaging in the growing of tropical fruits in competition with complainant, or in the importing or selling of tropical fruits anywhere in the United States in competition with complainant, or in any other business in competition with complainant, the Camors-McConnell Company, until after said company shall have ceased the active continuance and prosecution of the business of importing and selling such fruits, or until it has failed to show a profit for any calendar year after the year of 1899.

The marshal of the United States for this district or any of his deputies will execute this writ and make due return according to law.

WITNESS Honorable Melville W. Fuller, Chief Justice of the United States and seal of said Circuit Court of the United States for the Southern District of Alabama, at the City of Mobile, Alabama, this the 9th day of June, A.D. 1906.

(SEAL)

RICHARD JONES,  
*Clerk U. S. Circuit Court for the  
Southern District of Alabama*

## CHAPTER 6.

Containing a full account of the action of the State Department of the United States in behalf of McConnell and of the negotiations between him and the government of Costa Rica, including also a clear explanation of the "status quo" of the boundary between Costa Rica and Panama and of the legal principles and rights involved with regard to the disputed area.

### COMMUNICATIONS TO AND FROM THE STATE DEPARTMENT BEFORE McCONNELL'S FIRST MEMORIAL

MOBILE, ALABAMA, Sept. 24, 1903.

HONORABLE JOHN HAY,

Secretary of State, Washington, D.C.:

*Dear Sir*,—It has become necessary for me to appeal to you for assistance in an effort to overcome a complicated and very embarrassing situation. Some months since I bought of a Colombian citizen a concession issued by the Government of Panama granting the exclusive right for building a steam tramway or railroad to connect the Sixola River with a point known as Gadocan. That territory through which this road would run was until three years since claimed by both Colombia and Costa Rica, when the question was arbitrated by President Loubet of France, who in his decision fixed it as Colombian. Before the recent revolution in that country a joint commission was appointed by Colombia and Costa Rica to survey and fix accurately the boundary line, but on account of that revolution the commission never acted. It now appears that there is an understanding between Colombia and Costa Rica that the latter will hold jurisdiction over the territory in question until the boundary line is accurately fixed by a joint commission, but it seems that the Government of Panama was unaware of the existence of such an understanding between the National Government and Costa Rica when the concession in question was issued and when transferred to me.

Such a railroad as that contemplated would be of no value unless the river lands were improved, which I in good faith commenced at once, planting bananas largely which will commence producing fruit in the course of about twelve months, and, unless arrangements can be made

promptly for inaugurating and pushing to completion the work of improving the port of Gadocan and building the railroad, the fruit will be a loss, as there are now no facilities for shipping it.

All the improvements that I propose and wish to make at once in the way of planting and cultivating bananas, building the railroad, and making the port improvements, will require an expenditure of \$400,000 to \$500,000 which would tend to increase very greatly trade relations both in exports and imports between the United States and Colombia.

When in Panama on the 31st of August, Mr. Duran, who was then Governor, at my request cabled the Secretary of Foreign Affairs at Bogota, urging that a joint commission to fix the boundary line be appointed at once and directed to act promptly. He at the same time suggested that I request any friend whom I might have in Bogota to do what he could towards that end. When I suggested our Minister, he hesitated, but stated that that would be agreeable if he did not act in an official capacity. If you are kind enough to instruct him to interest himself in this matter, it must of course rest with you as to whether or not he act in an official capacity.

Governor Duran told me during the interview referred to that Costa Rica had already sent a minister to Bogota, who was authorized to act in the matter; but, even should the joint commission be appointed at once and act promptly, I fear that a long period would intervene before Costa Rica's temporary jurisdiction is withdrawn, hence it has occurred to me that possibly on the request of Colombia that government would recognize the terms of this concession, thereby wholly overcoming the difficulty.

"According to the terms of the concession, a copy of an English translation of which I herewith enclose, plans and profile of the proposed railroad were to be submitted within a given time, which was done, but the Governor declined to approve them unless subject to Costa Rica's temporary jurisdiction."

Costa Rica has on several occasions interrupted temporarily my work of surveying and planting, and refused to allow a commissary built on the north bank of the Sixaola River or within the limits of its temporary jurisdiction, and I am forced to ship all supplies over the river bar, which is rough and dangerous both to life and property. Any shipments handled through Gadocan would be subject to confiscation, hence under such circumstances it is impossible to do anything towards the improvement of the port and the building of the railroad. The Colombian Govern-

ment is, of course, responsible to me under the concession for any losses inflicted by the Costa-Rican Government, but I of course desire to work harmoniously with that government. Furthermore, the payment for goods confiscated would not secure the end desired, namely, that of building the road and opening the port for vessels.

An expert engineer, whom I employed at considerable expense to survey the port situation and direct its improvement, has just returned, and I am now very anxious to push the work with as little delay as possible.

Regretting that it has been necessary to write you at such length in order to place the matter before you fully, and trusting that you will find the time to give it attention and will advise me what action you have taken, I am,

Yours respectfully,

H. L. McCONNELL.

No. 38

DEPARTMENT OF STATE,  
WASHINGTON, September 30, 1903.

ARTHUR M. BEAUPRE, Esquire, etc., etc., etc.,  
United States Minister at Bogota:

*Sir*,—I enclose a copy of a letter from Mr. H. L. McConnell, in which he states that he owns a concession issued by the Governor of Panama, granting the exclusive right for building a steam tramway or railroad to connect the Sixola River with Gadoan; that the concession lies in the territory decided by President Loubet to belong to Colombia; but that the boundary line has not been fixed by the commission; and that until so fixed Colombia permitted Costa Rica to administer the territory; and that the latter government is preventing him from operating his concession according to its terms.

The Department does not know how far the acts of the Governor of Panama in relation to concessions of this character are subject to the control of the Colombian Government, but it cannot see how Mr. McConnell can do anything under the concession until the boundary line between Colombia and Costa Rica shall have been definitely fixed by a joint commission.

You will, however, if you find the facts as stated, use your good offices in view of the American interests involved to facilitate the appointment and prompt action of a boundary commission.

I am, etc.

ALVEY A. ADEE,  
*Acting Secretary.*

No. 889.

WASHINGTON, November 12, 1903.

MERRY, Minister, San José:

H. L. McConnell, American citizen, represents he owns concession from Governor of Panama, exclusive right to build railway connecting Sixola River and Gadocan in territory determined in 1900 by arbitrators appointed by Colombia and Costa Rica to belong to Colombia, but boundary line not yet fixed by joint commission. Until fixed, Colombia permits Costa Rica administer territory. Costa Rica prevents McConnell continuing work begun pursuant to concession under threat confiscation of property. Present disturbed condition will probably delay fixing boundary. McConnell offers to give any reasonable bond to secure Costa Rica against damage from the continuance of the work. If facts as represented, use good offices with Costa Rica to permit the continuance of work.

(s.) HAY.

Cablegram received San José, Nov. 12th, 11.30 A.M.

No. 889.

NOVEMBER 14, 1903.

TO THE HONORABLE JOHN HAY,  
Secretary of State, Washington, D.C.:

Sir,—I have the honor to acknowledge receipt of your cablegram dated 12th inst., code translation of which I beg to forward herewith (Enclosure No. 1). I have made the inquiry instructed of the Acting Minister of Foreign Relations with the following result: The Government of Costa Rica, having been informed that Mr. H. L. McConnell was building a banana railroad from the Rio Sixaola to the little port of Gadocan, sent an agent there to see what he was doing, and from this agent has received a report stating that Mr. McConnell has permission to build the road, granted by the Governor of the Department of Panama. The valley of the river Sixaola is being planted with bananas, and the use of the port is necessary in shipping them for the reason that the river bar is impassable from lack of sufficient depth of water. The territory through which the road is being constructed is awarded to Colombia by the Loubet decision, but Costa Rica claimed jurisdiction prior thereto. While the Government of Costa Rica asserts, with obvious propriety, that only the government at Bogota could give a concession to build a railway through what was Colombian territory, it makes no assertion of invalidity because

it does not at this time claim jurisdiction. It is disputed territory near the boundary line. The Acting Minister of Foreign Relations assures me that his government has not demanded that the work be stopped, neither has it given permission that constructions may be continued. It would decline to accept any bond from Mr. McConnell lest such document might indicate that it claims jurisdiction over the territory,—a position it declines to assume at this time. It would appear that the only manner in which Mr. McConnell can now possibly improve his position is to apply for a concession from the present Government of Panama. Costa Rica would not, in my opinion, contest its right to grant such a concession at this time, but it would appear an act wanting in courtesy to Costa Rica, and therefore it might be refused. It should also be considered that the independence of the new Republic may greatly change the boundary question with Costa Rica, and, if the territory alluded to is finally awarded to the latter, such action on the part of Mr. McConnell may work to his prejudice here. Without further discussion of the matter, I can state that the Government of Costa Rica asserts that it has not demanded cessation of Mr. McConnell's work under threat of confiscation or otherwise.

With assurances of my respect, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*United States Minister.*

No. 85.

MAY 24TH, 1904.

TO THE HONORABLE JOHN HAY,  
Secretary of State, Washington:

*Sir*,—Referring to your No. 36 of April 23rd I have the honor to forward copies and translations of the communications from the Foreign Office here in answer to my inquiries in the matter of the McConnell concession.

I am, Sir, with great respect,

Your obedient servant,

WILLIAM W. RUSSELL.

No. 364.

OFFICE OF THE SECRETARY OF GOVERNMENT,  
May 19, 1904.

YOUR EXCELLENCY:

In addition to my official Communication 326, dated May 10th, I beg to inform Your Excellency that neither the American citizen McConnell (H. L.) nor any other person is *concessionnaire* of the right to build a steam tramway or to lay tracks between the Sixaola River and the harbor of Gandoan.

Under date of the 2nd of April of last year the Secretary of the Treasury of the extinct Department of Panama, Dr. Julio Guerra, entered into Contract No. 44 with Mr. Ricardo Roman Romero, in virtue of which contract there was conceded to the said gentleman the exclusive privilege "for the construction and establishment of a steam tramway, which would connect the harbor of Gandoan with the right bank of the Sixaola River in the District of Bocas del Toro."

This contract was approved by the Governor of the extinct Department, Dr. Facundo Mutis Duran, upon the same date upon which it was entered into. Sent to the National Government of the Republic of Colombia for approval, the Minister of Finance, Dr. Ruperto Ferreira, annulled the contract absolutely through a resolution dated 31st of August, 1903, and communicated to the said government upon the same date in official despatch No. 382 of the 6th section of that Ministry. I have the honor of enclosing to your Excellency an authentic copy of the said resolution.

With sentiments of my most distinguished consideration,

I am, Your Excellency, Your obedient servant,

(Sgd) TOMAS ARIAS.

TO HIS EXCELLENCY W. W. RUSSELL,

Chargé d'Affaires of the United States, Panamá.

(A copy of the enclosure referred to is found on page 10.)

No. 966.

SEPTEMBER 16TH, 1904.

TO THE HONORABLE JOHN HAY,  
Secretary of State, Washington, D.C.:

*Sir*,—Your No. 592 of August 8th was acknowledged on August 20th, and a definite reply would have already gone forward in relation to the

interests of Mr. H. L. McConnell at the Rio Sixola and Port Gadocan, had it not been necessary to await the reply of the Government of Costa Rica to my question regarding her claim of jurisdiction over the territory alluded to. While even at this date a formal reply has not been received, the two interviews I have had with the Acting Secretary of Foreign Relations, Sur-José Astua Aguilar, enable me to furnish the information needed.

The Government of Costa Rica now not only claims jurisdiction over the valley North of the Sixola River and Port Gadocan, but I am credibly informed that such jurisdiction is not disputed by Panama. The divisional line between the two Republics will be established at the Sixola River on the Atlantic side, all North of the middle of said river being conceded as the territory of Costa Rica when the boundary treaty is formally completed and promulgated. Under these conditions, if Mr. McConnell desires further to pursue his labors at that location, it will be necessary for him to arrange terms of occupation with the government here and under the land laws of Costa Rica. Instead of further contesting the question, it now appears to be in his interest to freely concede the jurisdiction of Costa Rica as the preliminary step in obtaining a concession to develop the territory in question and to use the Port of Gadocan, which has not thus far been opened to foreign commerce by governmental decree. With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

No. 968

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA,  
September 21, 1904.

To THE HONORABLE ALVEY H. ADEE,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—Referring to my No. 966 of 16th instant and No. 967 of 17th inst., I have the honor to state that I have received a long despatch from the Government of Costa Rica bearing upon both, and which it is desirable shall reach you prior to any action regarding the McConnell case or in connection with the pending boundary question between Costa Rica and Panama.

The despatch in question and enclosure reached me late this evening, and the mail closing will not permit translations and copies being forwarded

until the direct New York mail leaving here on the 26th inst. I am also credibly informed that some new difficulty has arisen in the boundary question between the two governments which may prove an impediment to a friendly settlement. I hope to send you more explicit information upon these points in my next, which should reach you about three days after this. With assurances of my highest consideration, I beg to remain,  
Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

No. 969.

SEPTEMBER 24, 1904.

TO THE HONORABLE ALVEY A. ADEE,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to forward herewith copy and translation (Enclosure No. 1) of a despatch received from the Acting Secretary of Foreign Relations of Costa Rica in relation to the McConnell occupation of the Port of Gadocan and lands adjacent thereto, in the valley of the river Sixola. Also copy and translation (Enclosure No. 2) of an Executive Decree of the Government of the Republic of Panama, wherein possession of said territory and port are accorded to Costa Rica pending the settlement of the boundary question between the two governments.

These documents appear conclusive as to the advisability of application to the Government of Costa Rica by Mr. McConnell, if he desires to further prosecute his work at the location referred to, it plainly appearing that Mr. McConnell is now a trespasser upon the public lands occupied by Costa Rica. Mr. Adolf Dolder, a merchant at Bocas del Toro, was at this Legation prior to my return from the United States, and, I am told by the Acting Minister of Foreign Relations, was to obtain a power of attorney from Mr. McConnell, with whom he is associated in this matter, authorizing him to arrange with the government here for permission to prosecute the work, but I have seen nothing of him, although he wrote me from Bocas del Toro under date of August 18th, to which I replied on Sept. 2nd, approving his suggestion to return here for the purpose above stated. I am informed that he is now at Panama. With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

[The enclosures mentioned are the same as those enclosed in Minister Calvo's letter following.]

LEGACION DE COSTA RICA,  
WASHINGTON, December 23, 1904.

*Sir*,—Referring to what Your Excellency was pleased to express to me on Thursday, the 22nd instant, in regard to a claim of one Mr. McConnell against my government, and confirming the information personally communicated to Your Excellency in August and September last, in connection thereon, I have the honor to send herein enclosed copy and translation into English of a note from the Secretary of State for Foreign Relations of Costa Rica to His Excellency the Minister of the United States at San José, and decree of the Government of Panama mentioned in the same, in which the demonstration is given that no wrong has been done to the claimant, Mr. McConnell, but, on the contrary, that he has incurred grave responsibilities by having violated in various manners the laws of the country.

Be pleased, Sir, to accept the renewed assurances of my highest consideration.

(Signed) J. B. CALVO.

His EXCELLENCY JOHN HAY,  
Secretary of State.

[ENCLOSURE No. 1.]

DEPARTMENT OF FOREIGN RELATIONS,  
SAN JOSE, September 21, 1904.

[TRANSLATION.]

MR. MINISTER:

I have the honor to answer your Excellency's note of the 2d instant, in which Your Excellency is pleased to communicate to me that Mr. H. L. McConnell, alleging to have acquired rights on certain lands at Gandoca to build thereon a tramway by virtue of a concession granted to him at Panama, the exercise of which, he says, has been obstructed by my government, has applied to the government of Your Excellency requesting its high protecting intervention.

By virtue of the *uti possidetis* which for many years has been in force between Costa Rica and Colombia, and now between Costa Rica and the Republic of Panama, our bordering line on the Atlantic side is the river Sixaola, which means that the Gandoca region is under Costa-Rican sov-

ereignty, and that, therefore, no man can invoke ownership, possession, or usufruct in the said lands, except upon some title emanating from the Costa-Rican Government and authorities.

Mr. McConnell is, therefore, unreasonable in pretending to base his alleged acquisition upon a grant or permission of the Government of Panama; but the case is still worse for him because even this kind of an explanation cannot be made by him. The Government of the Isthmus denies the existence of the alleged concession, and, what is worse, has explicitly declared by Resolution No. 28 of the Department of Government and Foreign Relations, dated August 2nd ultimo, and published in No. 47 of the *Gaceta Oficial* of the present year, that Gandoca has been and will continue to be within the jurisdiction of Costa Rica as long as the question of the boundary between the two countries is not finally settled. That Resolution, a copy of which I have the honor to enclose herewith, and which, as Your Excellency will perceive, refers to a violation of the immigration laws of the Isthmus, positively states that Gandoca is foreign land to the Panamanian Government. It was issued against Messrs. Adolfo Dolder & Co., who appear to be associated or cointerested with Mr. McConnell in the matter to which Your Excellency refers. Therefore, the conclusion is inevitable that the said Mr. McConnell cannot use even the argument of error or ignorance about the rights of Costa Rica in the above-stated region.

The foregoing would be sufficient to show to the righteous and learned government of Your Excellency that the claim to which this correspondence refers is groundless, but I deem it advisable to set forth before Your Excellency the facts and the attitude of the claimant from the standpoint of our laws and authorities.

Mr. McConnell, without having obtained any concession, and acting merely *de facto*, by simple occupation, as if the lands were vacant, took possession of a great extent of lands at Gandoca, cut down the timber in some places, undertook cultivation in others, began to construct a tramway, and, not satisfied with this, violated our customs laws, causing ships to come to that coast, and imported merchandise as if said locality had been authorized to carry on foreign commerce. The Government of Costa Rica, desiring to put an end to those acts of manifest usurpation of ownership and disregard of the national sovereignty, and at the same time to enforce our customs laws, sent to Gandoca not a military force, but a small section of the customs officers of the custom-house of Limon,—a section which still remains there in the exercise of its functions.

These are the facts which I have already had the honor to explain to Your Excellency in the conference with which Your Excellency was pleased to favor me in these days. I entertain the conviction that Your Excellency will clearly see that the claimant, Mr. McConnell, has no acquired rights in Gandoka, which is a portion of Costa-Rican soil; that, therefore, no wrong has been done to him by the action of our authorities in causing the power and the sovereignty of the State to be respected, and that, very far from being right, he has incurred a grave responsibility by taking possession of lands with no title of any kind and engaging in foreign trade through a port which, according to our laws, is not a port of entry.

I close this communication with the flattering hope that the wishes of Your Excellency to obtain information about this matter have been fully satisfied, and, repeating to Your Excellency the expression of my high respect and consideration, I have the honor to subscribe myself,

Your most obedient servant,

(Signed) JOSE ASTUA AGUILAR.

HIS EXCELLENCY WILLIAM L. MERRY,  
Envoy Extraordinary and Minister Plenipotentiary  
of the United States of America.

(A copy of Resolution No. 28 referred to is found on page .)

✓ No. 976

OCTOBER 9, 1904.

To THE HONORABLE FRANCIS B. LOOMIS,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to advise the arrival here of Messrs. H. L. McConnell and O. F. Dolder, their visit being for the purpose of ascertaining whether any arrangement can be made with the Costa Rica Government by which they can continue the development of the North side of the Sixaola Valley and the use of Port Gadocan as tributary thereto, pending the settlement of the sovereignty over said territory and port, Costa Rica being now in occupation thereof and having stopped their work. In accordance with your instruction to use my good offices with the government on behalf of Mr. McConnell, I introduced him to the Minister of Foreign Relations, stating the purpose of his visit and the hope that a mutually satisfactory solution can be reached.

I beg to forward herewith (Enclosure No. 1) copy and translation of a

permit from the Inspector of the Port of Bocas del Toro, Republic of Panama, authorizing the steamship "Orn" to proceed to Gadocan to discharge her cargo. The clearance is not specified as being "Coastwise" or "Foreign," but, if the latter, would be illegal for the reason that Port Gadocan has not been declared open to commerce by the Government of Costa Rica which is now in possession. The document is forwarded at the suggestion of Mr. McConnell.

An able attorney has been employed by Mr. McConnell to draw up his proposed agreement with the Costa Rica Government, and he hopes that it may be accepted, possibly with some modifications. If declined or vitiated by onerous requirements, Mr. McConnell having failed to accomplish anything with the Panama Government, intends referring the case to the Department of State, but I hope this may not become necessary. In my verbal communication with the Costa Rica Foreign Office regarding this matter, I have been careful to avoid discussion of the Loubet award and of the present boundary contention with Panama, except to assure the Minister of Foreign Relations that the United States Government will be much pleased if an agreement can be reached satisfactory to both governments.

With assurances of my highest consideration, I remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

No. 976.

[TRANSLATION.]

PROVISIONAL PAPER.  
FIRST CLASS.

REPUBLIC OF PANAMA.  
TO THE INSPECTOR OF THE PORT.

(Chief of the Guard.) Present.

Please grant permit that the steamer "Orn" in charge of her Captain, Morinkel, proceeding from Baltimore, and consigned to Otto F. Dolder, may weigh anchor for the place Gadocan (Sixola).

BOCAS DEL TORO, July 22nd, 1904.

OTTO F. DOLDER, per Grabowski.

*Weigh anchor.*

The Inspector of the Port.

(Signed) C. CLEMENT.

No. 980.

OCTOBER 15TH, 1904.

To THE HONORABLE JOHN HAY,  
Secretary of State, Washington, D.C:

*Sir*,—I have the honor to report that, after twelve days of active effort, Mr. H. L. McConnell has been unable to obtain any agreement with the Costa-Rican Government authorizing him to continue his work at Port Gadokan and in the Sixola Valley. He intends remaining here a few days to consult with his attorney, but I apprehend that he will not obtain any favorable result. Although Minister Pacheco has not formally resumed the duties of the Foreign Office, and returns to Panama on the 20th inst., he has been active in the McConnell case, and I have called upon him twice after my visit to the Acting Minister of Foreign Relations, Señor Astua, to suggest some arrangement favorable to Mr. McConnell. Mr. Pacheco asserts that he hopes to arrange the boundary question with Panama shortly after his arrival there on the 22nd inst., and cannot permit any arrangement here with Mr. McConnell to impress the Panama Government unfavorably; that it might seriously interfere with his negotiations.

Mr. McConnell having failed to obtain the arrangement he desired at Panama after a month of patient effort, and being equally unsuccessful here, I do not see what he can now do except to await the result of Minister Pacheco's negotiations at Panama. It is due to the Costa Rica Foreign Office to recognize that, although aware that Mr. McConnell has been urging action at Panama prejudicial to its interests, the government officials here have received him pleasantly, and have considered his case on its merits, as it appears to them, Mr. Pacheco remarking that he cannot blame him for trying to protect the interests of himself and associates.

With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

No. 76.

DECEMBER 20, 1904.

To THE HONORABLE JOHN HAY,  
Secretary of State, Washington:

*Sir*,—Referring to your unnumbered instruction of October 29th, 1904, delivered to me while home on leave of absence, in regard to the national

control of the land where an American citizen, Mr. H. L. McConnell, claims to have a concession, I have the honor to report as follows:—

The section of country on the Caribbean Sea, between the mouth of the Sixola River and Point Mona, in which Mr. McConnell is located, was given to Colombia (Panama) by the Loubet award. Costa Rica, however, had possession before this arbitration, and has not yet yielded control to Panama, nor has Panama formally demanded it.

A discussion is now taking place here between Señor Don Leonidas Pacheco, Envoy Extraordinary and Minister Plenipotentiary of Costa Rica, and the Government of Panama in regard to the entire boundary line between Costa Rica and Panama with reference to its complete readjustment regardless of the Loubet award. Therefore, it will be impossible to determine until this discussion is concluded which nation will have permanent sovereignty. The indications, however, point to Costa Rica's retiring from this territory as part of a *quid pro quo* for Panama's retiring from a corresponding portion of Costa-Rican territory.

In the meantime Costa Rica is exercising all police jurisdiction in this disputed section, and it would seem to me that McConnell's complaints should be submitted to the government at San José.

As supplementary to this despatch and as bearing upon the subject of McConnell's concession, I beg to enclose a copy of a letter addressed to me by Mr. McConnell which was not delivered to the Legation until after my departure for the United States last September, and which I have not had time to give earlier attention since my return.

I have the honor to be, Sir,

Your obedient servant,

(Signed) JOHN BARRETT.

[ENCLOSURE.]

PANAMA, September 27, 1904.

HONORABLE JOHN BARRETT,

United States Minister, Panama:

*Sir*,—Referring to our interview of this morning, I earnestly beg to request that you make a report to the State Department at Washington as to the present status of the boundary question between Panama and Costa Rica as explained to me yesterday. I feel that such a report coming from you would greatly facilitate the adjustment of Costa Rica's inter-

ference with my operations in the territory between the left bank of the Sixola River and Monkey Point, which is a part of that awarded to Colombia (now Panama) by President Loubet, September 11th, 1900.

If you can do so consistently, I would appreciate it if you would also convey to the Department my statement to the effect that, in addition to Costa Rica's having about two months since stopped all work in the Gadocan on the coast between Monkey Point and the mouth of Sixola River, I am just now in receipt of a copy of formal demand from the officer commanding the Costa-Rican troops that all works of whatsoever nature on the left bank of Sixola River be stopped, and stating that, unless that order is obeyed, he will be forced to carry out his "*instructions.*" That practically means the suspension of all my operations in that section, and the resultant losses, unless arrangements are made for prompt resumption, will be very great.

The interference has heretofore been confined to work at Gadocan, where we are starting the active work of laying the railroad track and improvement of the harbor.

While Panama questions the legality of my concession (which my attorney insists is valid), it offers to execute another as soon as the present complications with Costa Rica have been disposed of.

This government, however, admits its obligations to protect my planting interests, and on the 14th instant advised me, through an official communication authorized by the President and Secretary of Public Works, that the Secretary of State would be requested to demand that Costa Rica discontinue its interference. But on the 21st instant the Secretary of State addressed a resolution to me to the effect that his Office did not deem it prudent to make such a demand while the execution of the terms of the Loubet award are being discussed. Both Colombia and Panama have permitted, under written application for permission to plant fruit filed according to law and custom with the proper officials, that that and other improvements be carried on. Both these governments have all along up to the time of Costa Rica's stopping our work at Gadocan issued formal clearances for our lumber for that place, treating it as a home port.

Since Panama professes a desire to protect us, but is apparently too weak, we feel that we have the right to ask and expect the United States Government to do so, and urge that you present the matter to the State Department and ask, in my name, that the necessary prompt cable action be taken to that end.

Quite a large number of American citizens in Mobile, New Orleans,

Montgomery, Nashville, Tenn., Charleston, S.C., Cambridge, Mass., New York City, Washington, D.C., and other cities, have recently become interested in these operations through the organization of the American Banana Company, to which the properties and rights referred to are to be transferred. The terms of the Arbitration Treaty of 1896 stipulated clearly that whatever the decision may be will *itself* serve as a complete and binding treaty between the contracting parties, and will admit of no appeal whatsoever. There can be no question, therefore, but that Panama now has the right of jurisdiction over the territory in question, which fact is published by the government itself in that part of its Constitution setting forth its territorial limits.

The boundary line as set forth in the award is fully as distinct as the provisional one named in the *statu quo* or treaty of 1880 (copies of which are doubtless on record in Washington). Hence there can be no greater difficulties in at once putting the former into effect than in the latter in accordance with terms of the Treaty of articles 4 of 1880 and 1896.

The State Department will find, by referring to Minister Merry's report of November 14th, 1903, that it clearly states that Costa Rica "does not at this time claim jurisdiction." That report reads in part, "The territory through which the road [my road] is being constructed is awarded to Colombia by the Loubet decision, but Costa Rica claimed jurisdiction *prior thereto*." As no new treaties or agreements have been entered into since that date, Costa Rica can now have no good or legitimate reason for her forced assumption of jurisdiction.

Yours respectfully,

(Sgd) H. L. McCONNELL.

## McCONNELL'S FIRST MEMORIAL TO THE STATE DEPARTMENT.

Filed 21st December, 1904.

UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

IN THE MATTER

OF

THE PETITION OF HERBERT L. McCONNELL  
AND OTHERS FOR REDRESS FOR PROPERTY  
SUMMARILY SEIZED WITHOUT PROCESS OF LAW  
AND LAWFUL BUSINESS INTERFERED WITH ON  
TERRITORY ON THE SIXOLA RIVER NEAR THE  
BOUNDARIES OF THE REPUBLICS OF COSTA RICA  
AND PANAMA.

To the Honorable the Secretary of State,  
Washington:

*Sir*,—I, *Herbert L. McConnell*, a citizen of the United States of America, and residing in the City of Mobile in the State of Alabama, through my attorney and counsel, Macgrane Coxe, of the City and State of New York, do hereby respectfully show as follows:—

Touching again the matter relative to which I have already made several appeals to our Government for protection, and referring to the expression found in the Department's letter of November 23d, 1904, addressed to Mr. Sydney R. Prince, of Mobile, Ala., I beg to say that it is apparent that the presentations of the matter, as heretofore made by me, have impressed the Department with the view that in order to protect my rights it is necessary that our Government intervene between Costa Rica and Panama to determine, or in respect to the determination of, the boundary line between those two Republics. I respectfully submit that the necessities of the case do not require this, and that such misapprehension has probably arisen from my having too strongly presented the rights which I claimed and claim under a certain concession obtained by me from the

Republic of Colombia or the Department of Panama through one Roman Romero.

In my claims under that concession I have, as I am now advised and verily believe, and therefore aver, neglected to make a proper presentation of the rights which were vested in me long before the present difference as to the jurisdiction over the territory occupied by me arose, and which rights are quite as important and of the very greatest importance to me.

The view taken by the Department, as I understand it is that, if I entered upon territory in dispute between the two countries by reason of a controversy between them as to the proper location of their common boundary line, I must necessarily be held to have taken such chances as may be incident to the final determination of the true boundary line between the two Republics, without interference from our Government. The legality and equity of this position I by no means impugn, but I take it that, if I can show to the satisfaction of the Department that I acquired under Colombia vested rights in a given territory while the jurisdiction of that territory was concededly in Colombia, then no controversy that may subsequently have arisen between Costa Rica and Colombia or Costa Rica and Panama will be permitted to disturb the rights so acquired and vested before such controversy arose. This is the assurance that, as I understand it, was in substance given me by Mr. Adees letter of January 19th, 1904, and it is this claim that I make and now desire to present for your consideration. In other words, I assume that the Government of the United States will, in the first place, decline to interfere in any manner in the difference as to the boundary line between the two Republics, but will insist that all rights that were vested in its citizens before the difference arose, or not affected by the difference, shall be recognized and protected by whatever government may have jurisdiction over the territory, either temporary or permanent.

In 1880 Costa Rica and the Republic of Colombia entered into an agreement known apparently to their officers as the *Statu Quo* whereby a line of jurisdiction was established between those two countries pending the establishment by arbitration and treaty of the true and final line dividing their respective jurisdictions. This line was established along the centre of the Sixola River, and gave Costa Rica temporary jurisdiction over the territory now occupied by me. In 1896, however, a treaty of arbitration was entered into, whereby it was referred to the President of the French Republic to arbitrate between their respective jurisdictions, and by this treaty it was declared that

"The arbitrator's decision, whatever such may be, will itself serve as a complete and binding treaty between the two high contracting parties, and will admit of no appeal whatever. Both parties bind themselves to a faithful fulfilment and to resign all claims against the decision, staking thereon their national honor."

On the 11th day of September, 1900, the President of the French Republic made his award, which was accepted by Costa Rica. The message of the President of that Republic to the National Congress on May 1, 1901, reads in part as follows (the italics are mine):—

"Referring to our international relations, I will commence by giving you an account of an important and transcendental subject whose *settlement* has blasted the hopes of the Government and shocked in like manner the whole country. I refer to the decision, which as arbitrator his Excellency, Mr. Emile Loubet, President of the Republic of France, rendered under date of September 11th of last year, regarding the boundary dispute between Costa Rica and Colombia. Costa Rica, during a long period of laborious investigation, and at a cost of great pecuniary sacrifice, succeeded in obtaining extensive and valuable evidence respecting her territorial rights in dispute, and on that evidence she based her defence and her hope of complete success in the controversy. Unfortunately, and contrary to all expectations, the decision which—as far as it refers to the southern part of the Republic satisfies in a great measure our legitimate claims by adjudicating to us a goodly portion of the territory of which we *were deprived under the provisional Statu Quo of the boundaries*, and with it the exclusive sovereignty of the "littoral" of Golfo Dulce—*fixes the boundary on the Atlantic side upon unfavorable conditions*, and which signify for Costa Rica a considerable loss of the rights claimed.

"That decision says:—'The boundary between the Republic of Colombia and Costa Rica shall be formed by the spur of the Cordillera which runs from *Monkey Point on the Atlantic Ocean, and encloses to the north the Valley of the Tarire or Sixaola River*, and thence by the chain of mountains which divides the waters of the Atlantic from the Pacific to the ninth degree of latitude approximately; and from thence it will follow the watershed between the Chiriquí Viejo River and the affluents of the Golfo Dulce, terminating at Burica Point in the Pacific Ocean.'

"In the judgment of this Government, the boundary line was formed by the spur of the Cordillera which runs from *Cape Mona (Monkey Point) on the Atlantic Ocean and encloses to the north the valley of the Tarire or Sixola River* near the mouth of this river; that from thence it takes a southwest westerly direction to the left bank of this river to the confluence of the Yurquin or Zhorquin River (also called Sixola,

Culebras or Dorados) to 82 degrees 50 minutes west meridian of Greenwich, 85 degrees 10 minutes west of Paris, and 9 degrees 33 minutes north latitude."

This portion of the boundary line fixed by the Loubet Award, as construed and contended for by the Costa-Rican Government, gave the territory occupied by me to the Republic of Colombia, so that the location of this particular territory within the jurisdiction of Colombia was not only determined by the Award, but conceded by Costa Rica, and was not in any manner in dispute.

Article 1 of Law 61 of 1874, and of Law 48 of 1882, established by the Republic of Colombia, and subsequently adopted by the Republic of Panama, and which were in force at the time that I first acquired the rights in the territory in dispute, and which are still in force, when translated, read as follows:—

"1st. Any person that occupies uncultivated lands and establishes thereon residences and artificial cultivation, acquires the right of property over the cultivated land whatever may be its extension.

"2nd. When the cultivation consists of artificial pastures, coffee, cocoa, or whatever other fruits which do not necessitate the repeating of the planting in order to obtain periodical crops, the cultivator acquires the right to have allotted to him a portion of adjoining wild lands equal in extent to those cultivated."

In April, 1903, after the Loubet Award had assigned the territory now in question to the Republic of Colombia, and after the President of the Republic of Costa Rica had, as shown above, declared the construction placed by that Government upon the Award in so far as it designated the boundary line, and by such declaration assigned the territory in controversy to Colombia, and at a time when there was no dispute between the two Republics over Colombia's jurisdiction over that territory, I entered upon the lands now in controversy which then were uncultivated lands, and planted a large portion of them, and expended many thousands of dollars in the cultivation of fruits which do not require replanting, and established and built thereon about forty residences and other buildings. In doing so, I complied strictly with the laws of Colombia then in force, and I respectfully submit that by so doing I acquired a vested right in the property planted at a time when there was no controversy over the boundary line between the Republics which in any manner affected the territory under discussion.

In January, 1904, the War Department of the United States Government caused an official map to be made of the territory within the juris-

diction of Panama. It is presumed that it not only had before it such information as I was able to obtain in regard to that territory, but much other matter to which I had no access, and according to the map thus made the territory in question was placed within the jurisdiction of Panama. A copy of this map is herewith filed, and prayed to be made a part hereof. On February 15, 1904, the Government of Panama declared unconditionally its sovereignty and right of jurisdiction over the territory through the publication of its Constitution Article 3 of which reads as follows:—

"The territory of the Republic is composed of all the territory with which the State of Panama was created by an additional act of the Granadian Constitution of 1853 on the 27th of February, 1855, transferred in 1886 into the Department of Panama, with its islands and the continental and insular territory awarded to the Republic of Colombia by virtue of the decision of the President of the French Republic on the 11th day of September, 1900. The territory of the Republic stands subject to the jurisdictional limitations stipulated, or which may be stipulated in the Public Treaties celebrated with the United States for the construction, maintenance and sanitation of whatsoever means of interoceanic communication. The boundaries with the Republic of Colombia will be determined by Public Treaties."

These matters are mentioned merely to show that in entering upon this territory, claiming rights under the Republic of Colombia, I did not recklessly invade territory in controversy, but took possession of property only that had been assigned by the clear terms of the Award to Colombia, as already conceded by the Government of Costa Rica, as subsequently interpreted by the War Department of the United States, and as heretofore shown the Government of Panama on February 15 last declared to the world that that Award was in effect.

Having obtained full title to the lands in controversy under the laws of Colombia and of Panama, I have the clear legal right to build a private railroad over them without any further concession from any government. It is true that I also claim special privileges for this road under a concession obtained from the Republic of Colombia before the formation of the Republic of Panama, but, as these privileges are questioned upon grounds that cannot affect either my vested right to plant this territory or my right to construct a private road, without special privileges, over these lands, nor my right to the safety of my person and property from molestation or seizure while in the peaceful pursuit of my lawful business, and

as these rights were vested when there was no dispute between the Republic of Costa Rica and the Republic of Panama over the boundary line that affected this territory, I do not now claim protection for the special privileges that I acquired under that concession, but am insisting upon the protection of my vested rights acquired in a territory admittedly within the jurisdiction of Colombia at the time that I, in strict conformity with its laws, acquired a property interest therein.

Prior to the fall of 1903 I had expended large sums, not only in planting these lands, but in making preliminary preparations for the construction of a railroad over them, when Costa-Rican soldiers stopped my surveying for a day or two at a time. At my instance you cabled Mr. Merry, American Minister at Costa Rica, to use his good offices to prevent that Government from interfering further with my operations. On November 14, 1903, Mr. Merry reported to your Department in part as follows:—

"It [the Government of Costa Rica] makes no assertion of invalidity [of the McConnell concession] because it does not at this time claim jurisdiction.

"The Acting Minister of Foreign Relations assures me that his Government has not demanded that the work be stopped, neither has it given permission that the construction may be continued."

"It would decline to accept any bond from Mr. McConnell lest such document might indicate that it claims jurisdiction over the territory,—a position it declines to assume at the present time."

"The territory through which the road is being constructed is awarded to Colombia by the Loubet decision, but Costa Rica claimed jurisdiction *prior thereto*."

And it concludes,—

"Without further discussion of the matter, I can state that the Government of Costa Rica asserts that it has not demanded cessation of Mr. McConnell's work under a threat of confiscation or otherwise."

Costa Rica then withdrew from further interference with me or my business until the latter part of the month of July, 1904, when it sent soldiers to Gadocan, and, after permitting the discharge of a large portion of a cargo of railroad supplies, confiscated them, stopped all of the railroad operations, and on September 21, 1904, the officer in charge of the Costa-Rican soldiers issued a written order that all the work, including that of planting (extending over a territory of some twenty miles) on the left bank of the river, be discontinued. This attitude of Costa Rica has continued ever since, greatly to my damage.

I already have a large body of the lands in question planted with fruit, some portion of which is now maturing and going to waste for want of shipping facilities. In addition to this I have sustained a loss of many thousands of dollars through the confiscation of the railroad supplies referred to by being compelled to retain in my employ a number of persons who are under regular salaries, and have been damaged in many other respects.

As my rights were obtained under the laws of Colombia, which laws still obtain in Panama, I applied to the Panamanian Government for protection. It admitted that it owed me protection, and the President of the Republic caused an official communication, dated September 14, 1904, to be sent me, which communication reads as follows:—

"Mr. H. L. McConnell requests, in the foregoing memorial, that the Government of the Republic of Panama shall arrange with the Government of Costa Rica that, provisionally and pending the settlement of the boundaries between the two Republics, no impediment shall be offered to the work in which he is now engaged on the spot denominated 'Gadocan' situated on the left bank of the Sixola River.

"Although this Department has concluded that the Republic of Panama does not recognize as valid the contract entered into between Mr. Ricardo Roman Romero and the Governor of the extinct Department of Panama, which was eventually transferred to Mr. McConnell, it nevertheless, in consideration of the work that the petitioner has done on the spot denominated 'Gadocan' in matters of agriculture on a large scale, investing therein a large capital, the Government is willing to afford him all possible protection within its sphere of action. In consequence, the Government resolves:—

"To request the Secretary of Government and Foreign Relations to address the Government of Costa Rica and to demand from said Government that, provisionally and pending the settlement of the precise boundaries between the two Republics, no impediment be offered by the authorities of the Government of Costa Rica to Mr. H. L. McConnell in the work in which he is now engaged in the place denominated Gadocan."

On September 22 the Secretary of Foreign Relations of Panama, Mr. Arias, wrote me as follows:—

"For your information and final consequence, I remit you herewith the resolution which on this date was dictated by this office. Such reads as follows:—

"Republic of Panama: Executive National Power: Office of the Secretary of Foreign Relations: No. 42, Panama, September 22, 1904.

The Office of the Secretary of Construction urges in resolution No. 33 of the 14th instant that the Office of Secretary of State and Foreign Relations demand of the Government of Costa Rica the discontinuance of interference with the work which Mr. H. L. McConnell is carrying on at the place called 'Gadocan.' As the execution of the arbitrated decision on limits between Panama and Costa Rica is being discussed at these moments, this Office does not consider it prudent at present to make the requested demand and be it so resolved. Inform the Secretary."

It was not until long after I had entered upon these lands, and had expended large sums of money in planting, that I had any intimation whatsoever that either Government contended that there was any dispute over the boundary line between the two Republics which would in any way affect the land that I was occupying, and I respectfully submit that any controversy touching this matter which may have arisen after my rights were vested can in no wise affect those rights or deprive me of the protection of my own Government in their maintenance.

The present negotiations between Panama and Costa Rica, as stated to me in September last by the President and Secretary of Foreign Relations of Panama, and as I verily believe, are in the nature of an exchange of territory rather than the fixing of boundary line between the two countries. Costa Rica proposed to exchange the territory on the Pacific between the *Statu Quo* and Loubet Award lines for all that territory belonging to Panama near the Atlantic, west of the 82d degree 50 minutes west meridian of Greenwich, while Panama was willing to make the exchange basing the line near the Atlantic on the 83d degree. In October Mr. Pacheco, Costa Rica's Secretary of Foreign Relations, confirmed the statements of the officials of the Panamanian Government as to the exchange proposed.

Even if Costa Rica had at this time temporary right of jurisdiction over the territory, that Government's interference would be in bad faith both with the United States Government and with me, since in November, 1903, it clearly disclaimed the right of jurisdiction to Mr. Merry, a copy of whose report was placed in my hands by the Department of State in a letter from the Secretary to Hon. George W. Taylor, member of Congress under date of December 1, 1903.

As shown, I have under the laws of Colombia and Panama obtained vested rights in lands, the sovereignty and jurisdiction of which were at the time conceded by Costa Rica to Colombia, and in February last were unconditionally claimed by Panama through the publication of its Constiti-

tution; that Government admits that it owes us protection, and Costa Rica after slight interference with my work in the fall of 1903 declared to the United States Minister that it did not claim jurisdiction, under which assurance I continued to carry on improvements, and expend large sums of money, feeling assured of no further interference.

Under all the circumstances I respectfully submit to you that Costa Rica's action in seizing my railway supplies and stopping my work after it had been carried on for fifteen months at very heavy cost was wholly unwarranted, and especially is that true since it could not possibly sustain any loss by allowing it continued. That Government could, if it so desired, and if permitted by Panama, continue to police the territory without interfering with my operations. Unless relief is obtained at an early date, my losses, which are needlessly caused by Costa Rica, will be very great indeed through the impossibility of shipping fruit which will be maturing in great quantities.

I carried on all those operations alone until the 18th of June, 1904, when a large number of American citizens became interested through the organization of the American Banana Company (which is to succeed to the properties), all of whom look to our Government for the protection of their interests. Not only I, but all but about six of said persons, not only are now, but at all the times herein mentioned, were native-born citizens of the United States of America, and fully intend always to continue so to be.

As has been shown, the lands in question are on the north bank of the Sixola River, which river empties into the Caribbean Sea, near the little port of Gadocan. The lands entered for cultivation and cultivated by me under the Colombian statutes above referred to amount to about 10,000 acres, of which about 5,000 acres were planted by me and in full cultivation until my work was stopped as hereinafter stated. These lands were planted with the best banana plants, about one-half million in number, and the total expenditures made by me in and about such planting and cultivation was upwards of \$88,000. These plants, when in full bearing, which stage they should reach about the month of September, 1905, will produce about nine hundred thousand bunches per year of a net value, after payment of all cost and expenses of cultivation, gathering, handling, transportation, and selling, of about fifty cents per bunch at the Port of Mobile, or a total net value per annum of \$450,000.

In order to convey this crop to the coast for market, I have laid out on my said lands a tram or railway line of the projected length of about

twenty-five miles. But few rails have as yet been laid, owing to the interference complained of, but before such interference began I had already cut and cleared the right of way, at a cost for this work alone of about \$5,000. This rail or tram way is to be of forty-two inches gauge, the rails, the standard sectional steel rails (with steel angle joints), weighing thirty-five pounds to the yard, and the ties are likewise all to be of steel known as steel channel ties with steel clips and bolts. I have also purchased and shipped to the ground one locomotive and five flat cars, but have been prevented from using them or otherwise disposing of them, as will herein-after appear.

The first consignment of rails, ties, angle joints, clips, tools, and machinery for the work, and the locomotive, were shipped by the Norwegian steamship "Orn" from Baltimore on or about July 9, 1904. There were on board of steel rails 916 tons, and of steel ties about 26,000, with the necessary angle joints, bolts, and clips for the same. The ship cleared from Baltimore for Bocas del Toro, Panama, entered the goods at the custom-house there, and duly there received a permit to proceed to Gadocan for unloading (as will be seen by reference to Mr. Merry's No. 976 of October 9, 1904), and to that point it accordingly proceeded for this purpose. On arrival at Gadocan, however, the master, Mowinkle, was met by some Costa-Rican armed men, the commanding officer of whom forbade the unloading of the ship. Thereafter the commanding officer was prevailed upon to allow the unloading to go on until the Government at San José de Costa Rica could be communicated with. This took about eight days, during which the discharging of the cargo continued. At the end of this period, when about two-thirds of the cargo in tonnage, but three-fourths thereof in value, *i.e.*, about \$36,000, had been unloaded, the commanding officer of the Costa-Rican troops ordered all work of every kind to cease, and would not permit my agents to take or in any way use the landed merchandise or go on with the work in any manner. During the work of unloading a large lighter, about half loaded with cargo, was sunk in some sixty feet of water, and although I have procured a diving apparatus from New York at a cost of about \$500 for the purpose of raising the lighter and its load, and have accessible the other appliances for the purpose, I have been prevented from doing so by like orders of the Costa-Rican officers.

The "Orn" was thereupon compelled to, and did, withdraw to Bocas del Drago to unload the balance of the cargo; that is to say, some twenty miles away, with all the added expense of transshipment and rehandling

thereby made necessary. Again, on or about August 5, 1904, the schooner "Oscar G" left Mobile with about 50,000 feet of lumber, five flat cars, and some general merchandise, provisions and tools for the works, of the value and cost in all of about \$2,500, and was obliged likewise to discharge at Bocas del Drago.

Although, as shown, as much as 916 tons of steel rails and 26,000 steel ties have been seized or expelled by or under the authority or alleged authority of the Costa-Rican Government, this is by no means all the loss that Mr. McConnell and his associates suffer in this respect. They are under contracts calling for a total delivery (including those above mentioned) of these rails and ties, with the necessary accessories, such as angle joints and clips, of 1,375 tons of steel rails at \$20.95 per ton, and 50,000 steel ties at 51½ cents per tie, all f. o. b. Baltimore, and all deliverable by December 31st, 1904. Thus not only have these citizens been put to the loss of the property actually seized, and to the other great losses consequent on their being compelled to stop all their work, even that of the rescue of property sunk by accident into deep sea water, but they are also imminently threatened with having to respond in damages here for the non-fulfilment of contracts for the purchase here of materials necessary and appropriate for the development and improvement of the territory in question. It is to be noted that a considerable proportion of the labor performed and money expended as herein set forth was performed and expended on the right or southerly bank of the Sixola River, that is to say, on territory not in dispute, but conceded to Panama, and that the stoppage of the work as aforesaid will render all of this expenditure of no value whatsoever, and a total loss to your memorialists, although concededly made and performed by them in accordance with law.

Aside from all prospective damages, by loss of crops, profits, and otherwise, Mr. McConnell's actual outlay to date, which, if he is not presently permitted to go on with the work, will prove almost a total loss, amounts (including freights, insurance, etc.) to about \$200,000, as follows:—

Port Gadocan and Railway Engineering . . . . .	\$4,000
Clearing railroad right of way . . . . .	5,000
Locomotive, 5 flat cars, and hand cars . . . . .	4,500
Hoisting outfit and diving apparatus . . . . .	2,000
Railroad tools, etc. . . . .	2,500
916 tons railroad steel rails . . . . .	24,900
26,000 steel ties . . . . .	16,300

Launches, lighters, etc.	8,000
Buildings	10,000
Stock of merchandise	8,000
Wharf improvements at Gadoan	2,000
5,000 acres planted in bananas	88,000
	\$175,200
Rails and ties to be delivered before close of 1904 as per contracts	23,000
	\$198,200

Interest charges will more than make up a total actual expenditure of over \$200,000.

Why should all this property be wantonly wasted? The continuance of the work, under proper safeguards, can do no harm to either Republic, but must benefit both of them in bringing capital and a large new industry upon their borders. Is not the enlightened course (admitting for the sake of argument that there is a dispute as to jurisdiction, which we do not concede) to release this seized property at once, and permit the work to go on, the property and persons concerned to be eventually subjected to whatever sovereignty may be found to have dominion and authority?

As to the seizure itself, it is respectfully submitted that there can be little doubt that it was wholly unwarranted, and so tortious in its nature that it is the duty of the Government of the United States to ask, and its clear right to expect, prompt release of the property to its owners. If the Republic of Costa Rica makes any claim that its customs laws or any other law has been violated by your memorialists, and that it has seized and holds the property, and has caused the stoppage of said work, by reason of any such violation or for any failure or wrong-doing whatsoever, then it is respectfully submitted that such a claim was not put forth until after the said seizure, and your memorialists had no notice or knowledge of any such claim prior thereto. On the contrary, as we have seen, but a few months before the seizure, when referring to a previous act of interference with your memorialists' work, and one of much less gravity to your memorialists, the Costa-Rican Government, in the most distinct and formal manner, through the Minister of the United States at San José, not only denied that it had made any seizure or confiscation or demanded cessation of the work, and disclaimed the same, but even disclaimed any jurisdiction or any intention of claiming any jurisdiction whatsoever over the territory in question (Mr. Merry's No. 889 of November 14, 1903).

*Under the faith of these disclaimers* your memorialists transported these large amounts of property to the lands in question for their development, and expended these large sums of money in and about the same business; and the seizure and stoppage of work, they respectfully allege, is an unwarrantable and tortious violation of their substantial property rights, without any redress in the courts of either of the Governments concerned, and therefore the proper subject of diplomatic interposition in their behalf.

It is true that after having entered the steamship "Orn" at Bocas del Toro, and having given it permission to proceed to Gadocan to discharge, the Panaman Government has made a claim for duties on these goods, but said claim is in process of adjustment, and said Government has not made any protest against the discharge of said cargo, nor has it filed or asserted any claim or lien upon said goods by virtue of which they are being held by the Costa-Rican soldiers, armed men or Government, as the agents of the Panaman Government or otherwise.

WHEREFORE your memorialists respectfully pray:—

*First.* That the Government of the United States will demand of the proper Government or Governments that the property heretofore seized may be at once released to your memorialists, including houses, railway supplies, and all their property; and that they shall be permitted to pursue the work of planting, cultivating, and developing the territory in question, including the completion of said tram or railway, the raising of the sunken materials, and the landing of those delayed, and of such others as may be necessary and appropriate at Gadocan, and in all respects continue the work of development and improvement upon which they have entered, free of and from any molestation whatsoever by said Governments or either of them; and

*Second.* That your memorialists demand damages for their losses caused them by said illegal acts on the part of the Government of Costa Rica in United States gold or the equivalent thereof, as follows:—

(a) For the moneys actually expended in and about the cultivation, erection of buildings on and improvement of said lands, as per the schedule hereinbefore set forth, the sum of \$200,000, with interest thereon at the rate of six per centum per annum from the 25th day of July, 1904.

(b) As losses sustained by them by reason of their being prevented from carrying on said work, the sum of \$2,000,000, with interest on said sum at the rate of six per centum per annum from the date hereof. As hereinbefore shown, a conservative and reasonable estimate of the net profits of the said banana-growing enterprise is at least the sum of \$400,000 a

year, which, capitalized at the rate of 20 per centum per annum, produces a capital loss of the said sum of \$2,000,000.

(c) Under and by virtue of the provisions of the laws of the Republics of Colombia and Panama hereinbefore set forth (Fols. 14 and 15, *Ante*), your memorialists have, by virtue of their planting and cultivation of said about 5,000 acres of said land, as aforesaid, acquired "the right to have allotted to them a portion of adjoining wild lands equal in extent to those cultivated."

For the losses of these adjoining lands, they are, at a conservative estimate, entitled to and they demand damages in the amount of \$10,000, with interest thereon at the rate of six per centum per annum from the date hereof.

*Third.* For such other and further relief as in the premises may seem just.

And your memorialists will ever pray.

Dated WASHINGTON, December 21, 1904.

(Sgd) H. L. McCONNELL,  
*For himself and on behalf of the  
 persons composing the American  
 Banana Company.*

MACGRANE COXE,  
*Attorney and of Counsel for Memorialists.*  
 63 Wall Street,  
 New York City, N.Y.

DISTRICT OF COLUMBIA, } ss  
 CITY OF WASHINGTON, }

HERBERT L. McCONNELL, being duly sworn, deposes and says that he is one of the memorialists mentioned in the foregoing memorial; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters alleged on information and belief, and that as to those matters he believes it to be true.

H. L. McCONNELL.

Sworn to before me this  
 22d day of December, 1904.

(Sgd) WILLIAM McNEIR,  
*Notary Public.*

(NOTARIAL SEAL.)

FURTHER COMMUNICATIONS TO AND FROM THE STATE  
DEPARTMENT AFTER McCONNELL'S FIRST MEMORIAL.

No. 619

DEPARTMENT OF STATE,  
WASHINGTON, February 8, 1905.

WILLIAM L. MERRY, Esquire,  
etc., etc., San José.

*Sir*.—I enclose duplicate copies of a Memorial filed with the Department on December 22, 1904, by Mr. H. L. McConnell, of Mobile, Alabama, on behalf of himself and others composing the American Banana Company, and of the documents filed with the Memorial. I also enclose two copies of a letter to the Department, dated February 2, 1905, from Mr. Macgrane Coxe, attorney for McConnell and the said Banana Company.

You will bring the matter informally to the attention of the Costa-Rican Government, and will also furnish it copies of the documents above mentioned for its information.

It is alleged that McConnell and the Banana Company are sustaining unnecessary losses from goods sunk in a lighter which they are not permitted to save, as well as other unnecessary losses and injuries, and it is desirable that they should be, in any event, saved from such unnecessary losses.

You will say informally to the Minister for Foreign Affairs that the Department does not now undertake to pass on the merits of the question presented by Mr. McConnell in the Memorial above mentioned. But you will add that the Department would be pleased if a *modus vivendi* could be arranged between the Costa-Rican government and the said McConnell and his associates, which would have the effect of saving them from unnecessary and avoidable losses for the time being. The Department does not undertake to interfere in any matter of boundary disputes between the Costa-Rican Government and Panama, and any equitable arrangement that might be made between the former government and McConnell and his associates would be without prejudice to any rights of title which either of the parties may be eventually considered to have. You will say to the Minister that the Government of the United States is not making any intervention in the matter, reserving the whole subject for fuller consideration, should that become necessary, but you are simply acting in the way

of good offices with the earnest hope of the Department that some satisfactory *modus vivendi* may be arranged between McConnell and his associates, on the one hand, and the Costa-Rican Government on the other.

You will cable briefly the substance of the Costa-Rican reply.

I am, Sir,

Your obedient servant,

JOHN HAY.

No. 1015.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, February 24, 1905.

THE HONORABLE JOHN HAY,  
Secretary of State, Washington, D.C. :

*Sir*,—I have the honor to acknowledge receipt of your No. 619 dated February 8th, with enclosures relating to the McConnell claim against the Government of Costa Rica. Having carried out your instruction therein, I have sent you cablegram reading as follows, translated from code: "Costa Rican Government expects to sign boundary line treaty with Panama in a fortnight. Meanwhile has agreed to mutually satisfactory *modus vivendi* with McConnell."

While the proximate signing of the treaty assigns to Panama Port Gadocan and the lower valley of the Sixola River, the ratification of the treaty by the Panama Congress which does not meet until September, 1906, unless called in special session, makes a *modus vivendi* with Costa Rica possibly advisable, although, after the treaty has been signed, I feel confident the Government will no longer obstruct the work of Mr. McConnell. In carrying out your instruction, I called upon Minister Pacheco to aid me, as Minister Astua has other portfolios under his control and is overworked. Mr. Pacheco leaves for Panama via Colon on Monday, February 27th, to sign the treaty. He asserts that Mr. McConnell has done all in his power at Panama to prevent a settlement of the boundary question, while Mr. Astua states that on two occasions he expressed his willingness to treat with Mr. McConnell for an occupation of the Sixola valley lands and Port Gadocan *pro tempore*, but Mr. McConnell declined his proposals. In this I think Mr. Astúa is correct, Mr. McConnell declining for the reason that he expected to be asked for a money consideration, and because Mr. Pacheco

has already admitted, as stated by Attorney Coxe, that the Sixola country would ultimately be given up to Panama.

One point that Mr. Coxe presents as important to his contention is, in my opinion, of no value. I refer to the clearance of the steamship "Orn" for Port Gadocan by Panama officials at Bocas del Toro. A maritime clearance has no value as proving sovereignty of the port for which a ship is cleared. It is not contended that, when the Collector of the Port of New York grants a clearance for Liverpool, the latter port is under American jurisdiction. The document merely permits the "Orn" to "clear" and "weigh anchor" for Port Gadocan. The same clearance would have been granted for Limon, Costa Rica, if requested. No pretence is found in the clearance that Gadocan is under Panama jurisdiction, and there is no pretence of permission to discharge cargo there. Consequently, the action of the supreme Government of Panama in approving the two hundred dollar fine against Dolder & Co. for bringing a Syrian from the temporarily Costa-Rican port of Gadocan is not contradicted by the clearance from Bocas del Toro by Panama officials of a ship bound to the same port.

I have no idea that the Costa Rican Government now intends to impede the work of Mr. McConnell, but a *modus vivendi* that will compromise its position in connection with any indemnity claim will naturally be declined.

I shall be pleased to do anything in my power to place Mr. McConnell and associates in a position to prosecute their work in the Sixola Valley without obstruction from Costa Rica. If Mr. McConnell thinks a *modus vivendi* important after the boundary treaty with Panama has been signed, specifying therein the location of his present operations, I have no doubt it can now be arranged unless it be connected with a claim for indemnity.

It is proper in discussing this question to inform the Department that prior to the commencement of work by Mr. McConnell at Sixola, and while it was expected that valley would remain under Costa Rica jurisdiction, a "denunciation" or presumption of practically the same lands was made by Costa-Rica citizens which was subsequently sold to American citizens for \$16,000. It is not certain that the subsequent legal obligations connected therewith (in regard to planting, etc.) have been fully complied with, but it may now happen that, when Mr. McConnell applies at Panama for concession of these lands, he may be confronted by a demand for recognition of such prior rights as were acquired under Costa Rica jurisdiction. Mr. McConnell is aware of this, and has said to me that he does not attach much importance thereto, considering the denunciation forfeited by failure to

fully comply with the law authorizing it. I allude to this as indicating the risk he assumed in locating his work upon territory of doubtful title, both as to sovereignty and private ownership.

With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
American Minister.

No. 1018.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA,  
March 9th, 1095.

TO THE HONORABLE FRANCIS B. LOOMIS,

Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to forward herewith the following explanatory enclosures: (copies) No. 1, February 23d, and No. 2, March 8th, Minister Merry to Minister Astúa; No. 3, cablegram from you dated March 6th, and my reply of March 7th, all alluding to the McConnell case.

With assurances of my highest consideration I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
American Minister.

THREE ENCLOSURES:

Minister Merry to Minister Astúa.

Minister Merry to Minister Astúa.

Copies Cablegrams from Hon. Acting Secretary  
Loomis and reply.

No. 1018.

[ENCLOSURE NO. 1.]

No. 234.

FEBRUARY 23D, 1905.

To HIS EXCELLENCY SEÑOR DON JOSÉ ASTÚA AGUILAR,

Minister of Foreign Relations, etc., etc.,

Republic of Costa Rica, San José.

*Esteemed Sir*,—I have the honor to forward herewith informally, for the information of Your Excellency's Government, a copy of the com-

plaint of Mr. H. L. McConnell, a citizen of the United States, relating to alleged damages inflicted upon himself and associates by reason of the action of Your Excellency's Government at Port Gadocan and in the Sixola valley.

The Department of State does not now undertake to pass upon the merits of the question presented by Mr. McConnell in the Memorial enclosed, but will be gratified if a *modus vivendi* can be arranged between Your Excellency's Government and the said McConnell and associates which will prevent avoidable losses for the time being. The Department of State does not undertake to interfere in the boundary question between Costa Rica and Panama Governments, and any equitable agreement thus made would be without prejudice to the rights of either of the parties interested.

The Government of the United States is not making any intervention in this matter, reserving the subject for further consideration, should that become necessary. But if a *modus vivendi* with Mr. McConnell and his associates can be arranged as suggested, it will appreciate the courtesy and good will thereby manifested.

Be pleased, Mr. Minister, to receive the assurances of my most distinguished consideration, and permit me to subscribe myself Your Excellency's

Most obedient servant,

WILLIAM LAWRENCE MERRY.

No. 1018.

[COPIES OF CABLEGRAMS. ENCLOSURE No. 3.]

*Hon. Secretary Loomis to Minister Merry.*

WASHINGTON, March 6th, 1905, 5 P.M.

MERRY, Minister, San José:

Did you receive Department's instruction of February 8th last *in re* McConnell? What negotiations have been had? Reply by telegraph briefly.

LOOMIS.

*Minister Merry to Hon. Secretary Loomis.*

SAN JOSE, COSTA RICA, March 7th, 1905.

SEC. STATE, Washington:

Instruction stated was received. I replied by cable and mail February

twenty-four. Government of Costa Rica promised arrangement for *modus vivendi* with McConnell or agent when either arrives. Boundary treaty was signed yesterday Panama.

(Code Translations.)

No. 1018.

[ENCLOSURE No. 2.]

No. 236.

MARCH 8TH, 1905.

His EXCELLENCY SEÑOR DON JOSÉ ASTUA AGUILAR,  
Minister of Foreign Relations,  
Republie of Costa Rica, San José:

*Esteemed Sir*,—Following my official call this A.M. at Your Excellency's office, in connection with the McConnell case, I have the honor to acknowledge receipt of your note inviting my personal visit at one o'clock tomorrow, which I accept with pleasure.

Whatever may have been the *status* of the McConnell claim *vs.* Your Excellency's Government heretofore, the signing of the Panama boundary treaty on the 6th inst. has, in my judgment, entirely changed it, indicating the advisability of prompt action to avoid useless and serious responsibility. Mr. McConnell should, it appears to me, be at once advised to hereafter address himself to the Panama Government when discussing his position at Gadoan and the lower Sixola valley. It appears only an act of justice to himself and associates that Your Excellency's Government shall promptly permit him to proceed with his work, subject to the control of the Panama Government, for which the territory is temporarily occupied in trust by Your Excellency's Government, until the treaty shall be approved by the Congress of Costa Rica and that of Panama. This course appears not only equitable, but will avoid reclamation for damages which must otherwise follow.

For this reason I have respectfully suggested that I may be permitted to telegraph my Government that, "the boundary treaty being signed, the Government of Costa Rica no longer opposes or obstructs the work of Mr. McConnell and associates at Gadoan and Sixola valley."

Assuring Your Excellency that my action is induced by my desire to avoid future contention, I have the honor to subscribe myself, with most distinguished consideration, Your Excellency's most obedient servant,

WILLIAM LAWRENCE MERRY.

LEGACION DE COSTA RICA  
WASHINGTON, May 25, 1905.

*Personal.*

HON. WILLIAM L. PENFIELD,  
Solicitor, Department of State:

*My dear Sir,—*I have the honor to send you enclosed herein, as promised, a copy of a translation into English prepared at this Legation, of the application presented to my Government by Mr. Herbert Lee McConnell, April 3, 1905, in relation to which I will have the pleasure to call on you, if convenient, Saturday, the day after to-morrow in the forenoon.

Very sincerely yours,  
J. B. CALVO.

[TRANSLATION.]

To THE HONORABLE THE SECRETARY OF STATE,  
Departments of Foreign Affairs:

I, *Herbert Lee McConnell Scott*, promoter, a citizen of the United States of America and a resident of the City of Mobile, Alabama, temporarily residing in the City of Washington, District of Columbia, being of lawful age and unmarried, hereby respectfully state as follows:—

For a number of years I have been engaged in the business of growing bananas in the neighboring Republic of Panama, and in view of the decision rendered by President Loubet in regard to the boundaries between the two States, and it also being universally known in Panama that in accordance with said decision the valley of Sixaola belongs to said Republic, I commenced, in conformity with the laws of that Republic, to plant on both banks of the river and near its mouth. I should also state that in those uncultivated regions I saw no indications whatever that the Government of Costa Rica was not in accord with the interpretation of the decision as understood in the neighboring Republic as well as other countries. Furthermore, the Government of Costa Rica did not advise me as to its attitude respecting those lands until my agricultural works had attained a great development, and my object in stating these facts is to demonstrate the good faith with which I began tilling on the left bank of the Sixaola River, and why I endeavored to use the port of Gandoa for my works. Knowing the spirit of justice and equity which pervades the policy of your Government, I trust that I may be protected in the possession of said lands heretofore cultivated by me, and therefore beg leave to present to the high

consideration of the President of the Republic and through the worthy channel of your office the following articles of agreement:—

1. Mr. McConnell shall have the right to cultivate and work one mile on the left bank of the Sixaola River, beginning at its mouth and extending to its confluence with the Uren River.

2. If Costa Rica, by diplomatic agreement, should transfer at any time to the Republic of Panama the said one mile and adjacent lands up to Gandoca, McConnell shall not have the right to make any claim against the Government of Costa Rica by virtue of this contract, *provided, however,* that said possession should not be respected by the Government of Panama.

3. Mr. McConnell shall furthermore have the right to establish a railroad line from his plantations to the port of Gandoca; and he shall also have the right to export his products through said harbor and to import through the same place whatever shall be necessary for his works and private use, as well as for his employees or workmen; and the custom duties on importations and exportations, including those of ships, shall be the ordinary duties of this Republic.

4. All of the merchandise and articles belonging to Mr. McConnell which were attached in Gandoca by the Government of Costa Rica shall be returned to the owner thereof. Mr. McConnell shall have the right to land and float all rails, cars, and other materials for the construction of the railroad. He shall furthermore have the right to land in Gandoca all of the materials of the said kind that the authorities of Costa Rica did not allow to be landed and which materials are deposited at the present time in Bocas del Drago.

5. All the railroad materials, rolling-stock, inclusive, as well as the materials for the construction of wharves and buildings annexed to the railroad and wharves, which may belong to Mr. McConnell, shall enter at any time free of any duties.

6. Mr. Connell shall have the right to construct at the port of Gandoca wharves, piers, and such other convenient works as may be necessary to facilitate the mooring of the ships which may arrive at that port.

7. Mr. McConnell shall give to the public service his railway line under the same tariff conditions which are now in force regarding the Railroad of Costa Rica. Besides, he shall also give to the public service his pier or piers, wharf or wharves, charging therefor a fair and reasonable rate.

8. As soon as the railroad line for the service of Mr. McConnell's plantations shall be completed to the mouth of the Uren, Mr. McConnell binds himself to construct railroad branches to such places in which he may find

owners of plantations who can assure him a traffic of not less than 75,000 bunches of bananas per year for each new railroad mile that he may construct; but with the understanding that Mr. McConnell shall not be obliged to construct any longer extension than eight kilometers each year, and he shall not be obliged to construct branches, the cost of which may exceed 25,000 colones per mile (1,609 meters, 31 centimeters). Should he construct more than eight kilometers a year, the excess shall be credited to his obligation in the following year. Mr. McConnell shall have the right, however, should he deem it convenient, to construct branches freely and in any direction whatever.

It seems to me that the proposed arrangement would open to the commercial life of this Republic all that vast territory of Talamanca. The Government would increase its revenues with all the fiscal taxes upon consumption, not only from the towns that may be formed on this side of the Sixaola River, but also from these already existing, or that may be built on the other bank of the river. Talamanca requires an enterprise on a large scale to serve as a centre for the development of other small concerns; *i.e.*, a railroad system and such works at the port of Gandoa as may seem useful both to the international and coastwise traffic. All this may be obtained and made possible by the terms of the contract which I have the honor to submit to the Government.

Awaiting a reply, I remain,

Yours very truly,

(Signed) H. L. McCONNELL.

SAN JOSÉ, April 3rd, 1905.

SAN JOSÉ, April 12, 1905.

MR. HERBERT LEE McCONNELL SCOTT,  
Present.

This Department acknowledges receipt of your communication of the 3rd instant addressed to my Government, in which you explain the reason and manner by which you hold possession *res nullius* of quite a large tract of land belonging to this Republic and situated on the margin of a river marking the southern boundary of this country towards the Atlantic, and submitting that in view of the justice of your argument this Government should grant you several concessions of extraordinary importance.

In your communication you state that for several years you have carried on the business of banana raising in Panama, and believing that all of the valley of Sixaola belonged to Panama, as was understood from the award

of President Loubet, as well as by the public opinion in the Isthmus, you not only carried on the work on the right bank of the river, which is the territory of Panama, but also on the left bank of said river, which is well known to have been always Costa-Rican territory and is so at present by virtue of the *uti possidetis* established between the two nations and in force from time immemorial, and so recognized by both nations.

In setting forth the above inexplicable error, which you could have easily avoided by a diligent study of the true state of the matter, you presume to establish that you were acting in good faith when you took possession *de facto*, without a title or even a license from this Government, of lands belonging to Costa Rica,—that is to say, assuming an unlawful occupancy amounting to a trespass against said sovereignty, not only in what refers to the unlawful appropriation of the land, but also in what refers to the importation of merchandise as carried on by you in Gandoa, a port not open by our foreign customs regulations; and, furthermore, you add that my Government itself kept you in said belief by reason of not having informed you of its attitude regarding those regions before you had made a great development in your enterprise, and because when you took possession of said land you saw no indication by which you could make out that this Republic was not in accord with the interpretation, which, as you say, was given in Panama respecting said award.

Against the above insufficient arguments adduced by you in order to justify the fact of your possession and advantage of said lands acquired by no legal means, for which there was no excuse, unless we set aside the most elementary principle of public law, I find myself compelled to state to you, firstly, that not only by the Department of Foreign Affairs of Colombia before the secession of the Isthmus, but also by the Panama Government since its independence which gave to Panama international *status*, the river Sixaola has been considered as the boundary on the Atlantic coast of both Republics, even after the award of the President of France, which award gave solely the general data for a demarcation of boundaries not yet carried into effect, evidenced by the resolution of the Secretary of the State of Panama, No. 28, dated on the 2nd day of August, 1904, against Mr. Adolfo Dolder, who tried to establish for his own benefit that the territory of Gandoa belonged to said Republic.

Said resolution was published in the *Official Gazette* of the 23rd of the above-mentioned month, and reads as follows:—

No. 969

Copy of the Executive Resolution of the Government of the *Republic of Panama*, published in the *Official Gazette* of that Republic, Year One, No. 47, Second Term.

Resolution No. 28, Republic of Panama: National Executive Power, Secretaryship of Government and Foreign Relations, No. 28, Panama, August 2, 1904.

By the resolution of June 10th of the current year the *Alcalde of Bocas del Toro* imposed a fine of two hundred "pesos" (\$200) upon the firm of Adolfo Dolder & Co. for having carried in one of their vessels to that town a *Syrian* proceeding from the Republic of Costa Rica,—a decision which the Provincial Governor confirmed. As the said firm has not conformed itself to this decision, it now requests revision by the Executive Power. As appears by the procedure instituted to impose the fine alluded to, and by the evidence given by the respective Governor, the *Syrian, John George*, embarked on the launch "*Mazini*," the property of Messrs. Adolfo Dolder & Co., at the place called Gandok in (Gadocan) situated between the mouth of the river Sixola and Point Mona.

Although by the arbitral award made by the President of the French Republic, *Gandokin* forms part of the Panama territory, this award has not been executed yet, and, while this is the case, the Government of this Republic does not exercise jurisdiction at that place, because situated within the limits of the disputed territory which originated the arbitration, and because the "*statu quo*" thus demands. In this manner the Costa Rican Government is the *actual possessor* of the place in reference, in the same way as that of Panama is the actual possessor of part of the Costa Rican territory on the Pacific. The execution of the award will give to each sovereign the possession of the territory which belongs to it, and the "*statu quo*" will then terminate, but meanwhile such is not the case. *Gandokin will remain under the jurisdictional action of Costa Rica*, and, as it was at that place where *George* embarked with destination to the jurisdictional territory of Panama, it is clear that Messrs. Dolder & Co. have violated the law which prohibits Chinese, Turkish, and Syrian immigration, and the decree which regulates it, reason for which the decision under examination is *correct*, and it is thus declared. Register, Communicate, and Publish. *The Secretary.*

TOMAS ARIAS (signed),  
(Secretary of State, etc.)

It seems that Mr. Dolder has been a partner or a representative of the aforesaid banana corporation, and such fact gives me sufficient ground for calling your attention to the other fact; viz., that, inasmuch as the Government of Panama, the only party entitled to make declarations worthy of attention in this respect and of informing you thereof, has never been considered to have dominion upon the left bank of the Sixaola River, your want of information upon the same subject is rather astonishing. Therefore, if you committed the mistake of depending upon popular rumors, uttered without knowledge of the facts and without authenticity, instead of applying to an official source to ascertain the said boundary, it is absolutely unjust and unreasonable to shift the burden of such carelessness upon the Government of Costa Rica.

I fail to understand what material evidence of the sovereignty of my nation you were looking for and trying to discover in the forestal zone and in other untilled lands which you have attempted to appropriate to yourself, since the boundaries of a State are established by virtue of its political constitution and by virtue of international agreements, it being absurd to allege that countries lose their jurisdiction over such portions of their territory as are not designated by monuments, landmarks, or other particular designations; in other words, that each country should build a wall on its boundaries or keep its contour within an uninterrupted cordon of official authorities who would proclaim its nationality to those who entertained any doubt thereabouts.

In the second place, I deem it necessary to affirm that a State need not serve notice as to its sovereignty upon each individual in order to fully exercise such sovereignty, and it need not exercise ostensible acts of possession over every foot of its territory in order that its rights may be maintained or that it may have the power to eject any trespasser therefrom in case of illegal occupancy, such being your case; and it is clear that, accepting the theory invoked by you in your communication, the integrity of all the nations of the world, even those of great populations and well defended, would be in danger.

Finally, allow me to observe that my Government could not make known to you its attitude of defence of the Costa-Rican territory—an attitude which you might have kept constantly in mind as evidencing the highest characteristic of the nationality—because you acted without giving notice of your actions and intentions to the Public Administration; and it was reasonable to believe that the Costa-Rican officers would ignore your works in the forest of Sixaola, which works are situated a great distance from the

centre of Government, until the enterprise itself produced something worthy of calling attention to such places, such as the maritime traffic in Gandoca and the tramway construction which you undertook on the coast; and it is well known to you that since that time our Government has not, in any respect, failed to exercise its authority there by enforcing such acts of jurisdiction and vigilance as belonged to it.

You take this opportunity of requesting in due form, for the first time, a concession for your enterprise; and, although it is true that this matter has been heretofore considered by this Secretary, you only promised to make offers, but such offers were not, in fact, made until the present time.

The foregoing arguments having been set forth as an answer to the first part of your communication, I proceed now to consider the different clauses of the agreement which you propose and to state generally all of the requirements and conditions upon which my Government would be willing to enter into an agreement with you, in accordance with the laws now in force respecting State lands and the regulations of Customs and Harbors.

You ask for the right to cultivate and work a mile on the left bank of the Sixaola River from its mouth to its confluence with the Uren River,—that is to say, a large tract of land, embracing the greatest and best part of Talamanca, including that region of the zone which would still belong to Costa Rica in case the treaty of boundaries, Guardia-Pacheco, be approved; the opening of the harbor of Gandoca,—that is to say, the establishment of a custom-house, which will involve a great expenditure for buildings, officers, etc., just for the service of your plantations, because there are not actually in that zone, nor will there be for a long time, mercantile or agricultural interests which would support or justify such a measure; a railroad and wharf grant which would for the present benefit you alone; and unqualified remission regarding the confiscation imposed upon the goods landed at Gandoca in spite of the fiscal laws; and, finally, exemption from all duties upon materials for the railroad, wharves, and buildings belonging to said enterprise.

You ask for all this without offering any compensation in return for such valuable grant, in which the State, besides giving you all the exploitable part of the Sixaola valley to the very heart of Talamanca, containing many thousand hectares, and leaving closed all communication with the rest of that region with its water-way, which would render impossible the cultivation of that zone. All that would give to you very profitable privileges which are not supported by any reason whatever.

In the interview which you had with the undersigned Secretary you had

an opportunity to become acquainted with the good will of the President of the Republic in regard to your petition, which good will is inspired by the justice and common interest of both parties, in accordance with our fiscal organization and the respect due to national sovereignty, and I have the honor to assure you now of the benevolent attitude of the President, declaring at the same time that the basis of your Memorial is unacceptable, because we can neither do an act of liberality with such enormous territory nor allow maritime traffic to be conducted in Gandoca because it is not a port open by the law, nor proceed to the establishment of a custom-house there for the sole benefit of your enterprise, because the grant and custom concessions for which you ask do not insure any benefit to the State.

In confirmation of the good will which I have heretofore expressed, I have the honor to advise you that this office is now ready and willing to come to a satisfactory understanding with you by means of an agreement to be entered into *ad referendum* in accordance with the following terms, and subject furthermore to the approval of the Congress of the Republic:

*First.* The Government of Costa Rica should grant to you a lease for twenty-five (25) years, respecting, however, the rights of third parties, of that portion of the State lands extending along the left bank of the Sixaola River, beginning at its mouth and embracing two thousand hectares, in consideration of an annuity.

*Second.* The aforesaid area should be measured at the expense of the enterprise into lots of five hundred (500) hectares, respecting, as stated before, the better rights of third parties, and leaving between lot and lot a free area of not less than a half of said portion, which should belong to the State.

*Third.* The Government should have the right to rescind *de facto* the lease as to those portions of the lands which shall not have been cultivated within a period of six (6) years, or in the case of plantations which shall have been abandoned for a period of five (5) consecutive years.

*Fourth.* At the expiration of the term of the lease all of the lands should revert to the public domain, and the works, buildings, and improvements constructed thereon should become the property of the Public Treasury, without any indemnification whatever on the part of the Government.

*Fifth.* You should redeem the goods which were confiscated by the authorities by paying the regularly prescribed charges according to the customs tariff then in force, but you could not exercise the right of navigating the waters of the Port of Gandoca until said port had been duly opened by the law of the Republic.

*Sixth.* A condition for the opening of said harbor should be that you pay all necessary expenses for the erection of the buildings required there for the exclusive use of the government officers, including more especially the offices for the Mayor, Police Station, and Custom House, and the salaries of said officials. You should deliver the necessary sums of money for the construction in a proper manner of said buildings and furnishing same in a suitable manner.

*Seventh.* The annual salaries of the employees and the rentals shall be fixed by mutual agreement.

*Eighth.* The harbor being thus opened, the railroad and wharf materials should pay one-half of the charges prescribed by the customs tariff.

*Ninth.* During the period of the franchises granted to the other banana enterprises the exportation of bananas from your plantation should not be subject to duties.

*Tenth.* The said lease, as well as all other additional covenants contained in this agreement, should be rescinded and rendered null and void from the date of the approval of the Guardia-Pacheco boundary treaty, which was signed at Panama by the respective Plenipotentiaries on the 6th of March ultimo, regarding the zone that, according to the demarcation of boundaries, should pass to the jurisdiction of Panama, it being understood that in the event of a rescission the Government shall not be liable in any manner whatever.

This office considers that the approval of an agreement upon this basis, which is submitted for your perusal as a project which ought to result favorably to you and an indication of the friendly manner of arranging this business without requiring you to answer for the trespass you have already committed, is a benevolent action on the part of my Government which I hope you will fully appreciate.

Yours very truly,

(Signed)      JOSÉ ASTUA AGUILAR.

No. 1037

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, April 23, 1905.

To THE HONORABLE FRANCIS B. LOOMIS,

Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to advise that Mr. H. L. McConnell, of Mobile,

Alabama, with Mr. O. F. Dolder, his Agent at Gadocan and Sixola, arrived here on 30th ult. to arrange, if possible, a *modus vivendi* with the Government of Costa Rica by which he can prosecute his work of planting in that section pending the approval of the treaty between Panama and Costa Rica by which that section is to become the territory of the former. On his arrival, after consultation with me, he arranged with his former attorney, Mr. Ricardo Jimenez, one of the best lawyers in the country, to present his case. On their first interview with Mr. Astua, Minister of Foreign Relations, he was requested to present his proposition to the Government. When this was submitted, Mr. Astua declined it and handed him a contract for a term of twelve years under such conditions that Mr. Jimenez recommended its rejection. I do not forward copy and translation of this rejected contract for the reason that it is a voluminous document and its examination will not interest you or throw light upon the question.

I was then called to take action in the matter as explained in enclosures herewith: Enclosure No. 1. translation and copy of note from Señor Carlos Lara, Sub-Secretary of Foreign Affairs, addressed to me, accompanying the proposal of the Government; Enclosure No. 2, copy of my reply thereto, joining with Mr. McConnell in its rejection, and stating my reasons therefor, also enclosing a memorandum of a *modus vivendi* the terms of which were arranged by Mr. Jimenez and myself, fulfilling, in my judgment, the equitable requirements of the case. The government offices having been closed since the 20th inst. to open Monday, 24th inst., I have not been able to see Mr. Astua and have not received a reply from the Foreign Office, but shall renew my efforts to-morrow to arrive at a mutually satisfactory result, of which I have some hope, provided the interests of third parties claiming a pre-emption or "denouncement" title from the Costa-Rican Government do not interfere. Even if without merit, a contest involving prior acquired title might possibly take the case into the Courts of Costa Rica, and prevent further action on my part at the present time. However, this is a possible contingency that we have not yet reached, and I shall spare no effort to so arrange the matter that Mr. McConnell may go on with his work without prejudice to other interests until the treaty has been approved or rejected by the Congress of Costa Rica and that of Panama.

I hope that I shall be able to write you definitely and satisfactorily by the end of this week, and will, in any event, report the result of my next interview with the Minister of Foreign Relations, on which occasion I shall be accompanied by Mr. McConnell and Mr. Dolder as his interpreter and agent at Sixola.

With assurances of my highest consideration, I beg to remain, Sir,  
 Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

ENCLOSURES:

1. Note Sub-Sec'y to Mr. Merry.
2. Mr. Merry to Minister Astua.
3. *Modus vivendi* from McConnell.

No. 1037.

✓ [TRANSLATION. ENCLOSURE NO. 1.]

SAN JOSÉ, 15th of April, 1905.

SECRETARY OF FOREIGN RELATIONS:

*Most Excellent Sir,—*I have the honor to send Your Excellency for your information the accompanying copies of the writing presented to this Secretaryship by Mr. Herbert L. McConnell Scott, citizen of the United States of America, and the reply given by the Secretaryship of Fomento to the showing and solicitation of Mr. McConnell regarding concessions for the exploitation of the lands on the left bank of the river Sixola. I am confident that Your Excellency, with your clear and correct judgment will see in these documents the spirit of friendly deference which animates my Government in the matter of Mr. McConnell. I avail of this opportunity to reiterate to Your Excellency the assurances of my most distinguished consideration.

For the Mr. Minister

*The Sub-Secretary  
 (s.) CARLOS LARA.*

To HIS EXCELLENCY MR. WILLIAM LAWRENCE MERRY,  
 Minister Plenipotentiary of the United States of America.

No. 1037.

(ENCLOSURE NO. 2.)

AMERICAN LEGATION, SAN JOSÉ, COSTA RICA,  
 April 18, 1905.

To HIS EXCELLENCY SENOR DR. DON JOSÉ ASTUA AGUILAR,  
 Minister of Foreign Relations, etc., etc.,  
 Republic of Costa Rica, San José:

*Esteemed Sir,—*I have the honor to acknowledge receipt of Your Ex-

cellency's note of 15th inst., enclosing copy of a concession proposed by your honorable Government for the acceptance of McConnell *et al.*, as applicable to lands at *Port Gadocan* and in the *lower Sixola Valley*, where he has already expended a considerable amount of money in cultivation and improvements.

After carefully reading the proposed concession, it seems to me probably applicable to a long occupation of government public lands with ascertained title and permanent sovereignty.

But it cannot, in any proper conception, be considered a *modus vivendi*, which is all that I am instructed by my Government to obtain for Mr. McConnell *et al.*, and it appears to me all that he can accept under the doubtful conditions of title and sovereignty above alluded to. I may be permitted also with entire good will and courtesy to Your Excellency's honorable Government to suggest that the proposed concession might become a serious detriment to the Treaty of Limits with the Republic of Panama, the signing of which has sincerely gratified the United States Government, and now awaits ratification. For while Your Excellency aims to provide against this by terminating all rights granted to McConnell, etc., should the ratified treaty place the territory within the jurisdiction of Panama, the fact remains that Your Excellency proposes to grant him specified rights for which he is to incur serious financial responsibility on a territory which Your Excellency's Government has agreed, by a treaty signed and only awaiting ratification, to transfer ownership from Costa Rica to Panama. Your Excellency will pardon this allusion which is properly not within the precise limits of my official action, and presented only because my Government will sincerely regret that my action endangers the approval of a treaty so valuable to both Republics, for which it entertains only sentiments of friendly appreciation and esteem.

An extended discussion of the conditions set forth in a document which is, in my judgment, inapplicable to the situation, seems unnecessary, especially as Mr. McConnell, under very competent legal advice, deems it necessary to decline acceptance, and has presented me with a copy of a simple *modus vivendi* such as I have been instructed to solicit in his behalf, and for which, under suggestion made by Your Excellency, he now visits this capital. A careful examination thereof impresses me with its fairness to both parties in interest, with such minor modifications as may possibly suggest themselves to Your Excellency's just and clear discernment. It is evident that the Government of Costa Rica cannot be equitably taxed with any financial responsibility by reason of the *modus vivendi*.

which Mr. McConnell desires: this he must provide for within the limits of equity. And he has no right to ask any other privilege than that of continuing the development which will certainly increase the value of the lands he occupies, always subject to the sovereignty and laws of the Government that will have *ultimate jurisdiction*. But I beg to suggest to Your Excellency's discernment that Mr. McConnell can only accept a *modus vivendi* which will enable him to prosecute his work until the ultimate sovereignty of the territory is decided, after which he must treat with the Government that acquires jurisdiction, for a more permanent occupation through mutual approval or failure of the treaty of limits. I have the honor to enclose herewith the proposed *modus vivendi* suggested by Mr. McConnell for the consideration of Your Excellency, and subject to such amendments as may be mutually agreeable.

Be pleased, Mr. Minister, to receive the assurances of my most distinguished consideration, and permit me to subscribe myself

Your Excellency's

Most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

No. 1037.

[TRANSLATION. ENCLOSURE NO. 3.]

*Mr. H. L. McConnell to Minister of Foreign Relations, etc., etc., of Costa Rica.*

TO THE HONORABLE SECRETARY OF STATE IN THE DEPARTMENT OF FOMENTO  
(Also Minister of Foreign Relations):

*Sir,—(Matter of H. L. McConnell in reference to lands on the Sixola).*

In reply to your communication which you were pleased to address to me on the 12th of the present month, I have the honor to make the following statements:—

I am pained to see that my conduct in beginning and continuing work on the left bank of the Sixola has been considered by your Government as a violation and disregard of the rights of the Republic. The points of view from which your Government and myself regard the facts are so opposed that it is believed a discussion of the subject will lead to no result acceptable to both parties. That consideration and the fact that I came to Costa Rica under the impression, which I still entertain, that your Government was disposed to agree with me on an equitable *modus vivendi*,

cuts me off, since it is unnecessary, from any discussion as to my rights from an international point of view or as to whether the fact of not having before arrived at a satisfactory arrangement is my fault or that of the Government.

Coming now to the proposition which you are pleased to make me, I am not disposed to accept it, because it does not constitute a *modus vivendi*. Our difficulty depends essentially on the precarious situation, for the Government at all events, in which the lands occupied by me have been and will be while the fate of the treaty as to boundaries with Panama is undecided. As is inferred from the last clause of your proposition, the ratification of this treaty will leave an uncertainty as to the valley of the Sixola. Our arrangement must be based on that uncertainty, and the question ought not to be considered the same as if the Government of Costa Rica could guarantee me for a long period of time the existence of the rights which it offers to concede me. The matter of my having to pay during twelve years all the expenses of the public administration in Talamanca and of having to deliver the buildings, railways, plantations, and other improvements to the Government of Costa Rica at the end of the term of lease, besides imposing on me burdens out of proportion to my enterprise, does not take account of the probability that very soon the whole, or the greater part, of these lands are to be delivered to Panama, and is not in accordance with the brevity of a *modus vivendi*, but rather with the idea of a concession assured and of long duration.

On the other hand, I understand that if at present the port of Gandoca would not be opened except on account of my enterprise, it seems to me also that within a short time, whether my enterprise were in existence or not, the force of circumstances would oblige the Government of Costa Rica to promote the development of Talamanca or to take note of the spontaneous development which will take place there; and they will be forced to open the port and to organize and maintain all the public services which good government demands. I do not, therefore, see the justice in my having to take upon my shoulders during twelve years the whole burden of the public expenses in Talamanca. The equity of the case, all that I ask, is that for the present, and while the uncertain position in which Costa Rica and Panama find themselves by reason of their treaty is being remedied, I bear the purely fiscal expenses which my importations and exportations through Gandoca demand. Always provided that these expenses do not exceed five hundred colones per month, more or less, I am ready to defray them.

As the first clause of your proposition reads, it leaves my rights completely in the air. You know, because I had the honor to speak to you about it, that Mr. Keith and others have under way proceedings of denunciation of the lands which I occupy, and as matters are going, if the Government does not remedy it in time, it will not be long before title to the lands will be given to these gentlemen, notwithstanding that the denunciation violates the laws of the Republic in two respects. The laws of Costa Rica declare a denunciation null and void the proceedings of which have been abandoned for six months. The said denunciation was inactive for about three years and a half, and notwithstanding this, and the fact that I had begun my plantations in April, 1903, the denouncers continued their proceedings in May, 1904, as though their rights had not lapsed. On the other hand, the Fiscal Code prohibits the denunciation of lands adjacent, for the width of one mile, to navigable rivers; and, nevertheless, Mr. Keith has confined his measurements to the said mile. The "Promoter Fiscal," if he had wished, could have rendered the claim of Mr. Keith void; but, as he did not wish to oppose Mr. Keith and his companions, notwithstanding I pointed out these defects before the judge, he approves all that has been done in the denunciation proceedings. Assuredly, the Government, now that they are advised through me of what has happened, will put matters right. Its intervention is indispensable and urgent. Without it, on the other hand, the lease which the Secretary of State offers me would be, in reality, illusory, due to the action of the agents of the Government, and without my being able, by virtue of the contract which you propose to me, to make any claim.

With the idea of a *modus vivendi* I propose the following: 1st. The Government of Costa Rica concedes to McConnell permission to continue his work at the port of Gandoa and in the lower part of the valley of the Sixola, until the ratification or failure of ratification of the treaty of boundaries with Panama. This authorization includes the right to construct a railway or tramway from any point on the lands cultivated or which McConnell may cultivate to the port of Gandoa, and to build a pier at that port and to occupy the land necessary for a station, warehouses, offices, dwelling-house, etc.

2nd. McConnell will recognize the sovereignty of Costa Rica pending the ratification of said treaty and will obey the laws of the Republic in those places.

3d. The port of Gandoa shall be opened to international commerce and coasting trade within the period of two months. McConnell will pay

the necessary expenses which the Government of Costa Rica may incur in consequence of the said concession and permission, including the custom-house expenses and of the employees of the Government in Gandoca, which may be necessary by virtue of the occupation of McConnell, always provided they do not exceed five hundred colones per month. However, McConnell will construct the buildings necessary for the offices and warehouse of the Government of Gandoca, required by virtue of this agreement. McConnell will pay the duties of importation and exportation in force in the Republic. The material for the railway or tramway, pier, and for the custom-house buildings and said offices of the Government, shall be admitted free. Vessels consigned to McConnell shall be exempt from port dues.

4th. McConnell shall at once have the right to recover the embargoed merchandise, to disembark the cargo which is now at Bocas del Drago in consequence of the opposition which the Costa-Rican authorities made to its disembarkation, and shall also have the right to raise and disembark the merchandise now sunk in the port of Gandoca, and he shall pay the customs duties according to the stipulation in the foregoing clause (3d).

5th. As McConnell has also plantations of bananas on the right bank of the Sixola, the Government will place no obstacle in the way of the free conveyance of the products of the right bank across the river Sixola; and of the conveyance to the same (right) bank from the left bank of provisions, tools, utensils, etc., necessary for the works or the necessities of the people employed by McConnell on his plantations.

6th. The Government of Costa Rica binds itself to oppose the denunciations under way or which may be made, which include the mile on the margin of the river on which the plantations of McConnell are situated or the maritime mile between Gandoca and the Sixola, these denunciations being inadmissible under the laws of Costa Rica; and this without prejudice of the rights of McConnell to oppose such denunciations by virtue of the present contract.

With all consideration I subscribe myself

Your very respectful servant,

(Sig.) H. L. McCONNELL.

(Sig.) RICARDO JIMENEZ, *Attorney.*

SAN JOSÉ, April 17, 1905.

No. 638.

DEPARTMENT OF STATE,  
WASHINGTON, May 12, 1905.WILLIAM L. MERRY, Esquire, etc., etc., etc.,  
San José:

Sir,—I have to acknowledge the receipt of your despatch No. 1037 of the 23rd ultimo, reporting that Mr. H. L. McConnell, with Mr. O. F. Dolder, his agent at Gadocan and Sixola, arrived in San José on March 30 for the purpose of arranging, if possible, a *modus vivendi* with the Government of Costa Rica, by which he can prosecute his work of planting in that section pending the approval of the treaty between Panama and Costa Rica, whereby said section is to become the territory of Panama. You also report the negotiations that took place between Mr. McConnell and the Costa-Rican Government since his arrival, and your efforts in his behalf.

Inasmuch as your despatch fails to enclose a copy of the *modus vivendi* proposed by the Costa-Rican Government, the Department is unable to form any opinion on the question whether it could not be properly considered a *modus vivendi*, as stated in your note to Mr. Astua under date of April 18 last. On the other hand, Mr. McConnell's proposal, contained in enclosure No. 3 of your despatch, appears in some particulars to exceed the requirements of a *modus vivendi*, as, for example, clause No. 6, which requires the Costa-Rican Government to oppose the denunciations mentioned, on the alleged ground that they are inadmissible under the laws of Costa Rica.

The Department does not wish that there be any misconception of its attitude in favor of a *modus vivendi*, which is, that it shall not interfere with or prejudice the rights of third parties. All conflicting claims of title are, at last, proper matters for the determination of the courts. The object of the *modus vivendi* should be to preserve the property of Mr. McConnell or of the corporation he represents, until the boundary question shall have been settled by the ratification of the treaty between Panama and Costa Rica, when the parties would have to resort to the courts of the State within whose jurisdiction the lands lie for the hearing and decision of the title to the property in question.

The foregoing observations are not intended in any way as criticising your action, but rather to express more fully than has heretofore been done the Department's view as to the line of action you should pursue in facilitating the making of a *modus vivendi* between Mr. McConnell

and the Costa-Rican Government. You will, of course, avoid giving to the Costa-Rican Government the erroneous impression that the Department is in any way committed in support of Mr. McConnell's claims, its attitude, in fact, being simply favorable to the preservation, by means of a *modus vivendi*, of whatever property he may have, but without prejudice to the legal rights of the Costa-Rican Government or of third parties.

I am, Sir,

Your obedient servant,

FRANCIS B. LOOMIS,  
Acting Secretary.

*Mar. 11  
A. P. Cal copy ✓*

No. 1043.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, May 7, 1905.

TO THE HONORABLE FRANCIS B. LOOMIS,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—Respectfully referring to my No. 1037 of April 23d, I beg to report that I have thus far been unable to accomplish anything at the Foreign Office here in effectually aiding Mr. McConnell. Two days since I received from the Minister of Foreign Relations a note enclosing a formal protest from Mr. Minor C. Keith and other American and Costa-Rican citizens against the pretensions of Mr. McConnell in connection with lands in the Sixola Valley, to which they claim prior title by denouncement filed in Court, and now pending, after survey of said lands. To this I replied yesterday, requesting that this Legation be furnished with copies of denouncement proceedings and Mr. McConnell's protest thereon, also copy of the denouncement law and outline sketch of the lands. The protest of Keith *et al.* is an impediment which I apprehend may defeat any effort on my part to obtain for Mr. McConnell a *modus vivendi* permitting him to go on with his work at the Sixola Valley. He labors under the evident disadvantage of having filed at the Department of State a heavy claim for damages and loss of prospective profits through the interference of the Costa-Rican Government with his operations at Sixola and Port Gadocan. This and the defence of Minister Calvo has been published in New York *Tribune* of January 15th, 1905, and probably in other newspapers, copies of which have reached here, and doubtless Mr. Calvo has also fully informed his Government.

On 3d inst. Mr. McConnell presented to the Minister of Foreign Relations another proposition for a fifty years' concession, to which no reply

has been thus far made. This was done without my knowledge, although he gave me a copy thereof on 5th inst. I have the impression that it will be declined by the Government, but its presentation after I had, with the concurrence of his attorney, declined the other concession for six years, proposed by the Government, will not aid my efforts for a *modus vivendi*. I forward herewith copy and translation of the protest of Minor C. Keith *et al.* addressed to the Government (Enclosure No. 1) and copy of Mr. Keith's letter to me dated May 4th (Enclosure No. 2), asking that the title of the Sixola lands be determined by the Costa Rica Courts, to which he and his associates have appealed. It seems now to be my duty to request, and I shall await, your additional instructions before taking further action in the case, unless meanwhile my request for a *modus vivendi* is conceded on conditions acceptable to Mr. McConnell. With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
American Minister.

ENCLOSURES:

1. Keith's protest.
2. Keith to Merry.

No. 1043.

[TRANSLATION. ENCLOSURE NO. 1.]

TO THE SECRETARY OF STATE IN THE OFFICE OF PUBLIC WORKS,  
National Palace:

We, Minor C. Keith, John M. Keith, Edgar J. Hitchcock, Mariano Guardia, David Andrew Johnston, and Felix Echeverria, come before you and respectfully submit the following:—

Relying implicitly in the stability of the National Institutions and the protection afforded by the existing laws, we obtained, together with several other parties, the rights of denouncers to a piece of Government Land situated on the Atlantic Coast along the left bank of the Sixaola River, with the firm intention of acquiring permanent titles to the land to establish on same an agricultural company on a large scale.

Pursuant with this proposition, we have pushed forward the work of

proving up the denouncement, until we now actually have *the land surveyed and measured* (which includes 6,000 hectares), and placed in such condition that it can be put up *at Auction*.

In this condition of affairs we are surprised to hear that *Mr. Herbert Lee McConnell* has presented to the Supreme Government a petition praying for a concession to exploit certain lands in which are included ours.

We must call to your attention the fact that the said Mr. McConnell has already undertaken to frustrate our legitimate aspirations by opposing our denouncement before the Court of Contencioso Administrativo. But his opposition was so uncalled for that the judge threw it out as a whole, and ordered that the denouncement be continued as set forth in resolution which to-day cannot be attacked, as it has passed the proper authority as a thing judged.

There is no doubt but what, in view of his failure before the Courts, and not being able to disturb us further in legal form, Mr. McConnell has gone to the Government, soliciting a *concession* which will serve as a basis to make a laughing-stock, although but for a moment (which in the case in question is of sufficient import), of that which has been definitely decided by the Courts and the existing laws of Costa Rica, and to violate unquestionable rights.

For these reasons and upon advice of what is happening, although we do not know the details of Mr. McConnell's petitions, we must respectfully call the attention of the Supreme Government to the following:—

The lands denounced by us cannot be the object of any special concession, because under the protection of existing laws we have acquired, among many others, the right to purchase them at Public Auction, and stand ready to make good that right at the proper moment. Further, it would be unjust to accede to the petition of Mr. McConnell, even though it were to be done reserving the rights of third parties, as that would be equivalent to placing it under such favorable conditions at the moment of auction that it would be beyond all control and to the prejudice of other bidders, more especially so to ourselves, and without the Exchequer deriving the most insignificant advantage.

If the Supreme Government, for any reason, desires that the transfer or adjudication of the lands under discussion be not made under the form of denouncement, and to which they are at present subject, we have no objection. if it does not prejudice our rights, to enter into negotiations with this object in view.

We beg of you that at the time of taking under consideration the propo-

sition which Mr. McConnell may have made relative to this subject you will please bear in mind what we have herein set forth.

With all due considerations, we are, dear sir,

(Signed)

D. A. JOHNSTON.  
FELIX ECHEVERRIA.  
MARIANO GUARDIA.  
E. J. HITCHCOCK.

M. C. KEITH,  
per John M. Keith.  
JOHN M. KEITH,  
For the presentation.

RICARDO PACHECO,  
*Attorney.*

SAN JOSÉ, COSTA RICA, April 6th, 1905.

No. 1043.

✓ [ENCLOSURE NO. 2.]

SAN JOSÉ, COSTA RICA, May 4, 1905.

HIS EXCELLENCY THE HONORABLE WILLIAM L. MERRY,  
Envoy Extraordinary and Minister Plenipotentiary  
of the United States, San José.

*Sir*,—As Mr. Herbert Lee McConnell has solicited from the Government of Costa Rica a concession of lands on the North bank of the Sixola River, under the jurisdiction of this Republic, we beg to call your attention to the fact that we, the undersigned, hold legal rights over a large part of these lands, dating from the 1st March, 1900, on which Mr. McConnell and his associates have squatted.

Enclosed herewith please find copy of Protest presented by us to the Costa Rica Government, under date of the 6th ultimo.

We are informed that Mr. McConnell and his associates are supported in their pretensions by you, in your official capacity, under instructions from our Government.

As American citizens, we bring this matter to your attention, feeling confident that it is neither the intention nor the wish of our Government to intervene in behalf of one citizen to the prejudice of the interest of

another in a matter in which the Courts of this Republic are fully qualified to act.

We have the honor to remain,

Your Excellency's obedient servants,

JOHN M. KEITH for self and in representation of minors,	(Sg.)	MINOR C. KEITH. JOHN M. KEITH. EDGAR J. HITCHCOCK.
EMILY M. KEITH.		
HENRY A. KEITH.		
JOSALIE A. KEITH.		
JOHN M. KEITH, Jr.		

(Others interested named in protest.)

No. 1050.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, May 21, 1905.

TO THE HONORABLE FRANCIS B. LOOMIS,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to forward herewith (Enclosure No. 1) a communication from Mr. John M. Keith, an American citizen resident here, representing the political interests of the United Fruit Company, an American corporation, addressed to the Minister of Public Works of Costa Rica, asserting that Mr. H. L. McConnell, an American citizen has violated his contract with said Company, as therein set forth, for which it has entered suit against him in the United States Courts. The protest of Mr. Minor C. Keith *et al.* against the action of Mr. McConnell was forwarded to you with my No. 1043 of May 7th, and I am since informed by Mr. John M. Keith that his Company is now also preparing complaint against McConnell *et al.* to be presented in a Costa-Rican Court of Law with the purpose of forcing McConnell to abandon his work in the Lower Sixola Valley. Under these circumstances, and having in view Diplomatic Instructions, page 67, Section 173, which distinctly state that diplomatic representatives "should take no part in litigation between citizens," it seems to me that my official action in connection with the case is no longer proper. There has not yet been time to receive reply to my No. 1043 of 7th inst., and meanwhile I have aided Mr. McConnell as best I could to obtain a *modus vivendi*, considering your former instructions temporarily

in force. I had a long interview yesterday P.M. with Minister Astua, at which were present Mr. McConnell and his attorney, Mr. Ricardo Jimenez, my purpose being to obtain some amendments to the *modus vivendi* which has now been offered Mr. McConnell. I succeeded in obtaining the Minister's promise of recommendation to the President, and it is possible that an arrangement may yet be reached next week. Meanwhile I hope to receive some further instruction from you, and it is possible that conditions may present themselves deciding me to cable you, but this I shall avoid if possible, the limits of a cablegram being, in such a case, generally unsatisfactory. I have endeavored to carry out your instruction in this matter to the best of my ability, and have confidence that, when you are informed of the litigation going on between these two companies of American citizens, in both foreign and United States Courts, the propriety of my withdrawing from even informal diplomatic action will be apparent. With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

ENCLOSURE:

1. Keith to Minister of Public Works.

No. 1050.

[TRANSLATION. ENCLOSURE No. 1.]

SAN JOSÉ, COSTA RICA, 18th May, 1905.

THE MINISTER OF PUBLIC WORKS,

National Palace:

*Sir*,—With reference to the Memorial which I, together with several other parties have presented to you, and in which we have opposed the petition of Mr. H. L. McConnell that a concession of lands be made him, I have the honor to communicate to you the following:—

In virtue of a contract entered into between Mr. Preston, President of the United Fruit Company and Mr. McConnell, of which I have the pleasure to forward you a copy, this gentleman cannot enter into the business of the cultivation and sale of tropical fruits.

Consequently, the works which he may have established or may desire to establish are in violation of this formal agreement.

For this infringement, suit has already been commenced against him in

the American Courts, as you will see by the copy of the claim enclosed herein.

As I had the pleasure to inform you recently, in view of our efforts in this Capital before the American Minister, to the end that he should not support the cause of Mr. McConnell, the American Minister has addressed himself to the State Department, Washington, requesting new instructions, and, according to a cablegram which I have received from New York, it is probable that that Department will not insist on the carrying out of its instructions to support or assist the project of Mr. McConnell.

With highest consideration, I beg to remain

Your obedient servant,

(Sgd) JOHN M. KEITH.

No. 639.

DEPARTMENT OF STATE,  
WASHINGTON, May 27, 1905.

WILLIAM L. MERRY, Esquire, etc., etc., etc.,

San José:

*Sir*,—I have to acknowledge the receipt of your despatch No. 1043 of the 7th instant, reporting that thus far you have been unable to accomplish anything at the Costa-Rican Foreign Office in effectually aiding Mr. Herbert L. McConnell to obtain a *modus vivendi* permitting him to go on with his work in the Sixola Valley.

The contest between Mr. McConnell and others over the title to lands along the Sixola River is one that belongs to the courts having jurisdiction. The Department cannot undertake to try to settle their conflicting claims of title, and the parties will have to resort to their legal remedies. The Department only contemplated a *modus vivendi* until the question of disputed sovereignty should be finally settled between the Governments of Costa Rica and Panama. Its attitude in this respect has been fully set forth in previous instructions.

I am, Sir,

Your obedient servant,

F. B. LOOMIS,  
*Acting Secretary.*

✓ Shown thru  
A.B.Cis.

No. 1051.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, May 28, 1905.

THE HONORABLE FRANCIS B. LOOMIS,  
Acting Secretary of State, Washington, D.C.:

Sir,—In further reply to your No. 638 of May 12th, I have the honor to report that, considering your orders effective until other instructions are received, I have continued my efforts to arrange a *modus vivendi* with the Costa Rica Government for Mr. H. L. McConnell.

Mr. McConnell to-day desired me to cable you, requesting reply by cable, in regard to his right to hereafter enter at the Department a claim for indemnity against the Costa Rica Government in case he withdraws the claim already presented. Having in view the tenor of your cablegram of May 22d, and awaiting instructions by mail via New Orleans, due in two or three days, I did not feel at liberty to comply with the request at present.

With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
*American Minister.*

ENCLOSURES:

- No. 1. Merry to Minister Astua.
- No. 2. Minister Astua's last proposition to McConnell.
- No. 3. Reply thereto of Mr. Jimenez, McConnell's attorney.

✓ No. 1051.

[ENCLOSURE NO. 1.]

MAY 26, 1905.

To HIS EXCELLENCY SEÑOR DON JOSÉ ASTUA AGUILAR,  
Minister of Foreign Relations, etc., etc.,  
Republic of Costa Rica, San José.

Esteemed Sir,—On the 23d inst. I had the honor to hand Your Excellency a copy of an excerpt and translation from a despatch dated May 12th, from the Department of State at Washington, distinctly disclaiming any desire to interfere with or to prejudice the rights of third parties in connection with the arrangement of a *modus vivendi* with Mr. H. L. McConnell. My purpose in communicating this to Your Excellency was to facilitate the proposed agreement with Mr. McConnell, the rights of third parties, which must be decided by Costa Rica or Panama Courts, being one point upon which Your Excellency was insistent. Another point upon

which Your Excellency was insistent is that Mr. McConnell shall withdraw his claim for damages now on file at Washington. As I have stated to Your Excellency, no such claim is, in fact, presented to Your Excellency's Government. It will be plain to you that any citizen can address the Government of the United States in his own behalf, but the presentation of a claim does not give it value worthy of notice by a foreign Government unless it be communicated and supported in due form through diplomatic channel. I beg to respectfully call Your Excellency's attention to my note addressed you on February 23d, which distinctly states the limited purpose of the *modus vivendi*, the intent of which is to avoid additional losses.

The exclusive jurisdiction of Costa Rica Tribunals in this matter, as affecting the rights of third parties in interest, is, as above stated, freely admitted by my Government, and thus the question does not appear to be in the present case an important one. If Mr. McConnell is willing to waive the right of diplomatic intervention in the future, I have no authority to prevent his doing so, but it is due to Your Excellency to have it distinctly understood that my Government must decline to be bound by such waiver; the right of intervention, as is conceded by Your Excellency, appertaining to the Government and not to its citizen or subject. These objections removed, I do not see what impediment remains to granting Mr. McConnell a *modus vivendi* which will be to the mutual advantage of all parties in interest, subsequent questions as affecting third parties being freely accorded submission to Costa Rica Tribunals, with which my Government disclaims any desire or right to interfere.

Mr. McConnell, having now awaited here the pleasure of Your Excellency's Government in this matter nearly two months, is anxious to return to the United States and equally desirous to meet Your Excellency in any mutually acceptable agreement. By your requirements Mr. McConnell must pay duties upon railway supplies from which others are exempt, and he is not permitted to complete his planting as he has arranged. These are onerous requirements in view of the payment of forty thousand (40,000) colones, indicating his disposition to concede all requirements so far as appears admissible with due regard to the interests he represents.

Be pleased, Mr. Minister, to receive the assurance of my most distinguished consideration, and permit me to subscribe myself Your Excellency's

Most obedient servant,

(s.) WILLIAM LAWRENCE MERRY,  
E. E. and M. P. U.S.A.

No. 1051

[TRANSLATION. ENCLOSURE NO. 2.]

*"Modus Vivendi" proposed by Costa Rica Government.*

MAY 2, 1905.

José Astua Aguilar, Secretary of State in the Department of Fomento, with sufficient authority from the President of the Republic, on one hand, and Herbert Lee McConnell Scott, who in this document will also be designated the "empresario" on the other, set forth the following:—

The exponent McConnell states the following facts:—

1. That in 1903 he occupied, without the consent or knowledge of this Government, a considerable tract of land on the left bank of the Sixola River, between Cuabre and Gandoka, believing that this land was a part of the Panama territory.

That he cultivated with bananas some 15,000 hectares of that land and at the same time he commenced to build a shed and two small houses on the coast for the service of his farm, and to build a tramway for the purpose of conveying fruit to the port;

And that, moreover, he sent vessels to Gandoka, with cargoes, notwithstanding the fact that that was not a port open to trade, and imported through that port building materials, provisions, and other articles to be used on his plantation.

2. That, when this Government obtained knowledge in the middle of the year 1904 of what was happening on these lands, they sent there a Fiscal force, which force seized, according to the law, the imported articles, and gave the order to stop the maritime traffic through the said port, and to discontinue the cultivation and to abstain from any act of ownership or possession of the occupied area; and for that reason the exponent did ask the intervention of the Government of the U.S.A., and filed before that Government a claim for indemnity against this Government, which claim is now pending.

3. That afterwards he was convinced that the Costa-Rican authorities had acted correctly, because the zone in which the farm and its annexes are located has belonged and belongs to the jurisdiction and sovereignty of Costa Rica by reason of the *uti possidetis* which has been in existence from time immemorial with Colombia regarding the boundary line before the separation of Panama, and which *uti possidetis* has been recognized and respected by the latter Republic in express and undoubted terms after its declaration of independence, and in consequence the exponent

decided to solicit from this Department permission to continue the cultivation until the Guardia-Pacheco Treaty shall have been ratified or rejected, and the exponent asked also permission to export meanwhile the fruit from his farm, and to continue for this purpose the construction of the tramway to be used for the conveyance of the fruit, and to build a pier at Gandoka; and, in fact, the exponent made the said petition thus, abandoning the diplomatic recourse he had adopted in order to obtain protection for the interests of his banana business.

4. That the Costa-Rican Government has heard this petition and has declared that the exponent has no right whatever to the said lands, that they cannot recognize, therefore, any right whatever derived from the fact of his possession, because such possession has its source in the ignoring of the sovereignty of Costa Rica in that part of its territory, but that the Government, to avoid as far as possible the losses attendant on the abandoning of the plantation and its annexes, while the exponent is seeking to obtain in legal manner, from whomever it may concern, the ownership or lease of the occupied area, is willing to grant him the permission aforesaid, it being fully understood that the said permission does not improve in any way the actual situation of the enterprise of McConnell, neither in respect to the absolute ownership of Costa Rica in those lands nor in respect to the titles to these lands which may be vested in private persons, nor in respect to the rights of third parties derived from denunciations already made, because the said permission only means that the State declares that they will not, during the said term, exercise against McConnell their right of excluding him from these lands, and means, too, the permission given to him to make use of the fruits of the plantation.

The Secretary declares that the position of the Government with relation to the petition of Mr. McConnell is that which has been stated, and both parties declare that, in order to grant to Mr. McConnell the permission the character, value, and limitations of which have been stated, the following agreement has been made:—

Subject to the limitations to be specified below, the Government concedes:

### I.

a. That Mr. McConnell may keep and exploit until May 31st of 1907 the banana fields planted by him in the lands situated on the left bank of the Sixola River, between Coabre and Gandoka, or, what is the same thing, in the region to be transferred to Panama, should the Guardia-Pacheco-Treaty be ratified.

b. That during the time he may continue the construction of the tramway already commenced, and he may use that tramway for the conveyance of his fruit to Gandoka.

c. That he may make at that port all the works he likes in order to facilitate the operations of loading and unloading of the vessels taken there by order of Mr. McConnell, for the purpose of landing there goods to be used at the farm or to ship fruit going abroad.

d. That he may introduce, subject to the conditions mentioned below, the materials for construction and the other articles required by the said enterprise.

e. And, finally, that he may export from Gandoka the fruit produced by the banana fields referred to.

## II.

The Government, during the 30 days following the ratification of this contract, by Congress, will fix the extension of the said farm by means of an official commission appointed by them. Only the public area actually cultivated with bananas shall be considered as lands of the plantation, because the permission granted by this agreement does not include those lands simply cleared of underbrushes and trees, nor does it authorize McConnell to increase the cultivations.

But, whatever may be the result, it is agreed that the area of the said cultivations shall not exceed 15,000 hectares.

The fees of the commission are to be borne by McConnell, and are now fixed at the sum of \$1,500, to be paid into the Treasury as soon as the members of the commission are appointed.

## III.

The said concession should be considered as a simple permission granted by the State in favor of the enterprise of McConnell on the conditions stated. In order to establish the special conception of that permission in this agreement, there are to be borne in mind the following observations:

a. If it is true that according to this agreement McConnell is allowed to keep the cultivations and to take the fruits, that grant does not imply any lease of the respective land, but a promise of the Government by which it will abstain exercising the right of exclusion vested now in the Government, and which right may be exercised at the end of the said term of this contract or when this concession is rescinded or invalidated according to the terms of this contract.

*b.* This concession being ended for any of the said reasons, there will remain the defects of the legal situation of McConnell in respect to his using of the said area, occupied by him without any good title,—that is to say, as possessor; and therefore this concession cannot afterwards be put forward in any way as a basis for claiming from this Government the acquisition of any right in the sense of owner or in any other sense which could confer upon him the right of use or usufruct of the said lands.

*c.* This concession does not affect the rights of third persons, owners or legal possessors of the said lands, and does not prejudice in any way the pending denouncements relating to these same lands.

#### IV.

This concession shall be considered at any moment and cancelled in every respect, whenever any of the following events shall transpire:—

1. The ratification of the Guardia-Pacheco Treaty signed at Panama.
2. The adjudication of said lands to third parties by reason of pending documents.
3. If McConnell should violate any of his obligations.
4. Should McConnell or any one of his employees engage in smuggling.

#### V.

At the expiration of this concession stipulated in clause 1, or if the permission or concession should be cancelled by reason of any one of the reasons stated in clause 4, McConnell shall be forced to abandon totally the lands to which this concession refers, and at the same time the permission relating to the traffic of importation and exportation by Gandoca shall cease, it being understood that then McConnell will not be entitled to any indemnization whatever.

#### VI.

McConnell shall pay to the Government the sum of \$40,000 as the equivalent of the values of the custom-house duties, including the wharfage and theatre tax on the machinery and material of the tramway and pier already introduced, or to be introduced during the term of the aforesaid permission.

The said sum shall be paid within 15 days following the final approval of this agreement.

Other articles introduced shall at the time of introduction pay the duties

fixed by the tariff, because the said sum of \$40,000 only covers the duties on the materials specified.

### VII.

No introduction whatever of articles for the enterprise shall be allowed without the previous registration and the license of the custom-house of Limon. For that purpose the vessel carrying cargo for McConnell is to arrive at that port, and, when the said registration and permit shall be obtained, the cargo may be conveyed, in the same vessel, to Gandoka, in which port the landing of the cargo shall be inspected by the custom-house employees commissioned for that purpose. Nothing may be landed without first obtaining the authorization of the said custom-house; and this custom-house, if the objects to be landed are not construction materials or machinery for tramway or pier, cannot consent to the landing without the registration and payment of the corresponding duties.

The vessels arriving at Gandoka with the object of transporting the bananas of McConnell shall sail from that port with the clearance given by the custom-house alcalde, who is authorized to issue in each case the corresponding clearance. Without the registration and permission to land, the act of landing goods is to be considered as smuggling.

### VIII.

In order to inspect the landing of goods at Gandoka and avoid smuggling, and in order to issue clearances to the vessels which may go there to ship bananas, an office shall be established there, consisting of an alcalde and two guards, whose lodgings and salaries shall be paid by McConnell.

The said salaries are fixed at the sum of \$9,000 during the term of the present concession, and this sum is to be paid into the Treasury in four instalments, the first one in the first month of the said term, the second in October of this year, the third next April, and the last in October, 1906.

### IX.

It is agreed that, notwithstanding the rescission of this permission for any of the reasons expressed in the clause or for any other reason not foreseen in that clause, McConnell cannot ask at any time repayment of the sums he is bound to pay, according to the term of this document, into the Treasury; and it is also agreed that the said resolution shall not give him the right to demand of the State any indemnization whatever, notwithstanding the loss or damage that fact might inflict upon McConnell.

## X.

Mr. McConnell declares that, although the permission granted by this document relates only to public lands, he assumes any responsibility incurred by the Government by reason of this concession, should there be taken or have been taken lands already appropriated or possessed by others; and he declares that from this moment he abandons and annuls the claims he established before the U.S.A. against the Costa Rica Government, to which this document at the beginning relates.

## XI.

This concession is to be submitted to the Congress for its approval, and cannot be transferred to any one by any title without the concession of the Government.

## XII.

Any question that may arise between the parties in regard to agreement and its consequences comes exclusively under the jurisdiction of the courts of this Republic, and is to be decided according to its laws, without any possible recourse to diplomatic intervention.

Submitted May 22d, 1905.

No. 1051.

[TRANSLATION. ENCLOSURE NO. 3.]

*Reply of McConnell to Minister Astua.*

MAY 25, 1905.

MR. SECRETARY OF STATE IN THE DESPATCH OF PUBLIC WORKS:

*Sir*,—Memorandum of Observations presented by *Herbert L. McConnell* to your proposed agreement.

1. Clause 1st (included to and clause 5th).

According to the first clause the concession will last until May, 1907, and according to clause 6, terminating the concession, McConnell should immediately evacuate the lands. This means that cultivation, railway, wharf, houses, and other improvements McConnell shall turn over without recovering the value of all this.

McConnell has to pay C40,000 (forty thousand colones), which is stated

to be the equivalent of all the customs duties on materials of railway and wharf. On this it is to be remarked that, according to the law of November 2nd, 1900, all the railway materials will enter free of duties for ten years, for the use of banana farms; and, although it is certain that this law alludes to the farms proximate to the Atlantic railway, this allusion does not signify that the Legislature desired to exclude from the benefits of the law the Talamanca region or the vicinity of the river San Juan, for example. The clear purpose of the law was to encourage the production of bananas in the Republic. Talamanca, according to the opinion of the Government, is part of Costa Rica; and for bananas the materials of the railway are necessary in this case, and there is no reason, then, for establishing a gross inequality contrary to Talamanca. If this customs question had been presented in ordinary cases, it does not appear that it would have resulted, unless applicable to the principle of the equality of the laws. For McConnell, consequently, the C40,000 (forty thousand colones) and the C9,000 (nine thousand colones) for salaries of the employees (clause 8) simply signify the price of all this arrangement, which he is disposed to pay, notwithstanding the increase which it imports.

But, if he has to see himself exposed at the end of two years to the abandonment, for the benefit of the Government, of his plantations, works of all classes, which signifies the loss of C49,000 (forty-nine thousand colones), and also the value of his improvements, it is clear that this pretended agreement, instead of serving to save his actual property, constitutes a financial operation entirely ruinous. It is not worth asserting that the difficulty of the limits with Panama will be arranged in two years. This may and may not occur. How long were they discussing the question between Costa Rica and Colombia? How much time has been occupied in negotiating a treaty between Costa Rica and Panama? Two years pass very rapidly; and, if McConnell signs the agreement which is proposed, he will probably be in the two years in greater difficulties than to-day.

The Government of Costa Rica promised a *modus vivendi*; and, since it has abandoned this base, there have arisen inextricable difficulties. The case of McConnell depends entirely upon the uncertainty about limits of the two neighboring Republics. There is no way of separating the two things. If Costa Rica offered a *modus vivendi*, it is because it understands that, while the question of limits is not settled, there is no possibility of celebrating a permanent agreement, nor of defining completely and at once this difficulty. Consequently, the first clause of the project which fixes a duration of *two years* is *against* the conception

of a *modus vivendi*. McConnell proposes that the said clause shall read thus: (a) "in which the manager conserves and develops, by means of the company of which he forms a part, the lands which he has cultivated in bananas or prepared for said cultivation on the left bank of the Sixola between Cuabre and Gandoca or in the region which, in case of ratification of the Guardia-Pacheco treaty of limits signed at Panama on March 6th, 1905, shall pass to be the territory of the Isthmus, and will conserve this possession until the question of limit shall have been fixed by the ratification of said treaty."

In regard to clause 5, by the method of a *modus vivendi* it will have to disappear. There is no reason why McConnell has to lose his cultivation and improvements.

### *2. Preamble of the Astua proposal.*

The declarations contained in this preamble are entirely non-conducient for the purpose of a *modus vivendi*, and are in contradiction with the idea of such a *modus vivendi*. If the region discussed is to pass, as the Government itself thinks, to Panama, the admissions which McConnell pretends to make may prejudice his rights before the Panama authorities, since these pretend that he has known by this document that he had entered to possess the said lands without any title or right. All the declarations that a person makes should be always and in all parts consistent in themselves. McConnell cannot make recognition of acts in Costa Rica, and make others in Panama in contradiction with those he made in Costa Rica or in Washington. The preamble, therefore, it is better to omit.

### *3. Conflict of right of third parties.*

If the lands occupied by McConnell have to be decided if they remain in the territory of Costa Rica, nothing is more natural than that it shall be the tribunals which have to decide all the questions between McConnell and third parties regarding the merit of their respective titles. But, while this international question is not decided, McConnell cannot admit that the *modus vivendi* terminates to his damage if the tribunals adjudicate the lands by virtue of denunciations pending in the tribunals of Costa Rica, and, above all, cannot admit that he has to recognize, as is implied in the proposed (clause 3, incision 0), (clause 4, incision 2), and (clause 10), the validity of these denunciations which are null even from the point of view of the laws of Costa Rica. With relation to this point McConnell proposes the following, which says:—

"The tribunals of the Country which have finally to adjust the region

in which are the plantations of McConnell shall be those competent to hear and decide the questions which exist with respect to the titles over said lands."

*5. Cancellation of the agreement by reason of contraband.*

The incision 4 of the fourth clause is inadmissible in that it makes McConnell responsible for smuggling by his employees or servants. If this contraband was effected through his orders, or with the consent of McConnell or with his notice, it is very reasonable that he is responsible for the crime. But, outside of these cases, McConnell cannot be responsible for such smuggling, and less when the Government maintains at Gandoca three employees paid by McConnell, with the obligation of preventing smuggling. McConnell can only promise that *he will do all in his power* to protect the Government from smuggling.

*5. The Government does not return amounts received in any case.*

The 9th clause says that the Government will not return any amount, even in case the concession terminates by any cause not foreseen in the contract. Understood as are with all minuteness all the motives of the agreement or cancellation, no other motive can be seen which can refer to clause 9. The phrase "or for any other in it not foreseen" is so vague that it is inadmissible.

*6. Exemption from import duties.*

The 6th clause only mentions machinery and material of construction of the railway and wharf. It should have mentioned also *all* the materials for *constructing the edifices* which the enterprise of McConnell needs in his plantations or in Gandoca.

*7. Renouncement of diplomatic action.*

McConnell does not think that this arrangement should cause any international reclamation. He has confidence in the equity of the Government of Costa Rica. But he cannot see the motive for which he has to place himself in worse condition than foreigners ordinarily occupy who have business in Costa Rica. On the other hand, as the same Mr. Secretary has recognized, the right of intervention *does not belong to the citizen*, but to his government. For the same reason the renouncement of McConnell is without value because he cannot dispose of that which is the exclusive right of the United States.

*8. Details of composition.*

The project, in alluding to the arrangement, always uses the form "of tolerance or license" conceded to McConnell. It would be better to use another word in accord with the spirit of this arrangement, because, if

the Government thinks the agreement a tolerance, McConnell does not so consider it.

*9. Renouncement of right to damages and losses.*

McConnell is not disposed to renounce the discussion of the point, if the Government of Costa Rica is obliged to indemnify the damages and losses which it has caused by the impediment which, since the past year, it has placed against his forwarding the works of his plantation and railway. This subject should be outside the present agreement. With all respect he subscribes himself attentive and obedient servant.

(Signed) H. L. McCONNELL.

SAN JOSÉ, May 25th, 1905.

▽ No. 1053.

LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSÉ, COSTA RICA, June 4th, 1905.

TO THE HONORABLE FRANCIS B. LOOMIS,  
Acting Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to forward herewith (Enclosure No. 1) copy and translation of a letter dated yesterday from Mr. Ricardo Jimenez, attorney for Mr. H. L. McConnell, addressed to the latter, stating the unfavorable result of their last interview yesterday noon with Minister Astua. At my last conference with Minister Astua on May 26th, when I was accompanied by Mr. McConnell, it appeared probable that we could arrange a *modus vivendi*, as explained in my No. 1051 of May 28th. But the enclosed memorandum by Mr. Jimenez of the interview they had with him yesterday has convinced Mr. McConnell that it is impossible to meet the requirements of the Costa Rica Government with due regard to his own interests. It seems to me that, if it were intended to make an arrangement with Mr. McConnell, it could have been done before this; but the parties appear unable to do this, notwithstanding my active intercession. Under these circumstances, Mr. McConnell is urgent that I shall cable you for instructions, which I am loath to do owing to your cablegram of May 22d, and for the reason that I should much prefer receiving your reply to my No. 1043 of May 7th which I await. Having been here two months, he considers the case urgent, and, desiring to avoid even the appearance of any disregard of his interests, I may decide to cable you briefly within two days, should it still

appear that under my present instructions I cannot obtain the *modus vivendi* which you desire for Mr. McConnell.

With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY.

ENCLOSURE:

1. Jimenez to McConnell.

No. 1053.

[TRANSLATION. ENCLOSURE No. 1.]

SAN JOSÉ, June 3d, 1905.

MR. HERBERT L. McCONNELL,  
Present.

*Dear Sir*,—To the end that you may preserve constancy of the interview which we have just had with Minister Astua, I pass to record briefly the declarations made by Mr. Astua:—

1. The Minister commenced by manifesting that the claims formulated by you in your last proposal he believes present obstacles which make impossible all arrangement, even if you consent to modify them.

2. Mr. Astua said that the President insisted in not extending the land that you solicited, and, although the President has not manifested what would be the maximum that he was disposed to concede, Mr. Astua believes that he could not obtain from the President the extension to two thousand hectares.

3. Mr. Astua repeated that the President would not consent to the change of the clauses of the last memorandum or proposition of the Government, referring to the rights that third parties might have in the lands which are the object of these negotiations. In other terms, the Government insists that the Tribunals of Costa Rica shall decide the questions without awaiting the definite arrangement between Costa Rica and Panama.

4. Mr. Astua declares that the arrangement never could remain more than ten years, even although at the end of this term the said question (of sovereignty) should not be decided.

5. Mr. Astua also declared that, the arrangement completed for any reason, you ought to vacate and turn over the lands in conformity with what is said in the memorandum named last handed you by the same Mr. Astua.

6. He stated, finally, that the President insisted that the forty thousand colones would cover exclusively the customs duties, referring to materials of construction, and not to duties on provisions or other articles.

I am ready to swear to the exactness of the contents of the present letter.

Your attentive and obedient servant,

(s.) RICARDO JIMENEZ.

*P. S.*—For the better understanding of the declarations of Mr. Astua I should state the replies of Mr. Astua are his answer to your last proposal in writing, modified verbally by you in relation to the indemnity for the damages and losses caused by the Government of Costa Rica by its arbitrary conduct. To arrange this point of damages and losses, you stated to Mr. Astua that you were disposed to renounce your reclamation, if the Government would not place obstacles to the cultivation of all the territory from Cuabre to below, which would belong to Panama in case of the ratification of the Guardia-Pacheco treaty, and if the forty thousand colones should cover all classes of customs duties on importations made by you or your company for the space of ten years. As a result, the answer of Mr. Astua refers to your written proposition, modified by the reclamation for damages and losses, as has been stated.

(s.) RICARDO JIMENEZ.

No. 1054.

• LEGATION OF THE UNITED STATES OF AMERICA,  
SAN JOSE, COSTA RICA, June 11, 1905.

THE HONORABLE FRANCIS B. LOOMIS,

Acting Secretary of State, Washington, D.C.:

*Sir*.—On the 6th inst. I cabled you as follows, translated: "Have not obtained arrangement for McConnell. Awaiting instructions." I was loath to send even the five words, but Mr. McConnell would have thought that I was not doing all in my power for him, and I felt obliged to accede to his request. Your No. 639 of May 27 has since reached me, and justifies my first objection to sending the message, as well as my decision not to ask for reply by cable. I have the honor to enclose herewith copy and translation of a letter from the Minister of Foreign Relations, Mr. Astua, dated 7th inst., stating his conclusion of negotiations with Mr. McConnell, and presenting his reasons assigned for a failure to arrange a *modus vivendi* with him. The letter was accompanied by Mr. Astua's last written proposition to Mr. McConnell, copy and translation of which form my Enclosure.

No. 2 in despatch No. 1051 of May 28, to which I beg reference. The Department will best judge of the value to be given his arguments. But it seems proper for the writer to state that no effort has been spared to obtain for Mr. McConnell a *modus vivendi*, acting under such instructions as I have received and which are confirmed in your No. 639, above alluded to. At the last interview I had with Mr. Astua, Mr. McConnell accompanying me, we had reached a basis mutually acceptable except in regard to the withdrawal by Mr. McConnell of his demand for damages on file with the Department of State. Both parties insisting on maintaining their positions in this respect, the question was then left open for further discussion without favorable result. Mr. McConnell informed me that he would leave for Bocas del Toro to-day, and thence to the United States.

With assurances of my highest consideration, I beg to remain, Sir,

Your most obedient servant,

WILLIAM LAWRENCE MERRY,  
American Minister.

ENCLOSURE:

Minister Astua to Minister Merry.

No. 1054.

[TRANSLATION. ENCLOSURE NO. 1.]

SAN JOSÉ, June 7th, 1905.

SECRETARY OF FOREIGN RELATIONS OF COSTA RICA:

*Mr. Minister*,—The friendly intervention of Your Excellency in the matter which has been ventilated in this Secretaryship with Mr. Herbert Lee McConnell moves me to communicate, in a confidential manner, the last occurrence in said business.

Upon the basis that there was no official intervention on the part of the United States and aiding the pretension of the said McConnell, Your Excellency made efforts before this Ministry to the end that there should be procured for the said gentleman a *modus vivendi* which should place him in conditions of being able to continue and exploit, on the terms of the present, the business of bananas which he has undertaken on the left bank of the Sixola, region of Talamanca.

The fact of Your Excellency as mediator and the good disposition with which my Government was disposed to treat with Mr. McConnell, always that his pretensions conformed with a spirit of equity and of reciprocity consistent with the parties interested, caused me to celebrate with him

several conferences with the idea that we might arrive at a result favorable to McConnell and in harmony with the laws of the country.

Mr. McConnell commenced by presenting to this Secretaryship a solicitation, dated April 3d last past, which I was forced to decline for not offering any advantage which might at least compensate in part for the valuable, as well as exceptionable, concession which it contained. Notwithstanding, to demonstrate the good disposition in which the Government found itself toward Mr. McConnell, on refusing his, it made him a proposition on the 12th of the same month and year which Mr. McConnell on his part thought well to refuse, notwithstanding that in my conception it promised a good future for his business. Later and at the request of McConnell this Secretaryship sent him a project of a contract, of which a copy accompanies this to Your Excellency, which offered him a *modus vivendi* sufficiently favorable, and which, apparently accepted in general, did not have his approbation in some details of importance.

McConnell objected to various clauses of the project mentioned, as follows: that which refers to the time of the validity of the concession and the consequent disoccupation of the lands and edifices constructed; that which placed to his charge the responsibility that the State might incur respecting the right that will correspond to third parties that may show themselves to be owners or possessors of the lands conceded to McConnell; that which fixes as one of the clauses for the forfeiture of the agreement the exercise of contraband at Gandoca by McConnell or by any of his subordinates; that which obliged the contractor to renounce the diplomatic procedure; and, finally, that which obliged him to renounce the right which he believes he has to demand damages and losses caused,—a pretension which my Government has always contradicted.

In regard to the first of the objections, I did not find it inconvenient to extend the term of the *modus vivendi* to ten years, always, of course, saving the possibility that in this lapse the Guardia-Pacheco Treaty should be ratified, which gives to the Republic of Panama a part of the territory which Costa Rica now occupies, and in which are situated the cultivations of McConnell. This last concession, made in complaisance to no desire to paralyze the pending negotiation, was not accepted by McConnell, and the Secretaryship under my charge and the said gentleman, having come to the situation which I have indicated with the brevity which the nature of this note demands, I should communicate to Your Excellency that at the last interview McConnell manifested to me categorically that his efforts should be considered closed.

With the object to furnish Your Excellency a methodical information in this matter, I place within your knowledge the foregoing exposition, and it pleases me to offer you the testimony of the greatest consideration and esteem.

(Signed)      JOSÉ ASTUA AGUILAR,  
*Minister of Foreign Relations, etc.*

No. 643.

DEPARTMENT OF STATE,  
WASHINGTON, June 20, 1905.

WILLIAM L. MERRY, Esquire, etc., etc., etc.,

San José:

Sir,—I have to acknowledge the receipt of your despatch No. 1051 of the 28th ultimo, transmitting copies of correspondence connected with your efforts to adjust the differences between the Costa-Rican Government and Mr. H. L. McConnell, and to inform you that your action is approved by the Department.

You are requested not to send your enclosures on flimsy paper, which easily becomes detached and torn.

I am, Sir,  
Your obedient servant,  
JOHN HAY.

NOTE. On the 22nd of October, 1905, McConnell filed a second Memorial with the State Department.

## McCONNELL'S SECOND MEMORIAL.

(Dated and sworn July 28th, 1905, but filed on October 18th, 1905.)

IN THE MATTER  
OF

THE MEMORIAL OF THE AMERICAN BANANA COMPANY,  
AN ALABAMA CORPORATION OF WHICH HERBERT L.  
MCCONNELL IS PRESIDENT, FOR REDRESS FOR  
PROPERTY SEIZED NEAR THE BOUNDARIES OF PAN-  
AMA AND COSTA RICA.

## TO THE PRESIDENT:

*Sir*,—On behalf of the American Banana Company, a corporation composed of citizens of the United States, I beg very respectfully to call your attention to the following considerations in support of their memorial which I submit herewith.

These citizens and their employees, in accordance with the laws of the Republic of Panama, which authorized them so to do, entered upon the public lands of that Republic, on the north side of the Sixola River, adjoining the Republic of Costa Rica, cleared the same, planted bananas there, and began to build a railroad to enable them to transport bananas from their plantations to the sea-board.

Officers of Costa Rica have forcibly stopped their work, have seized their property, and have prevented the continuance of the banana cultivation. If this conduct is persisted in, it will altogether destroy the investment made by the petitioners, and grievously infringe their personal rights.

All attempts hitherto made by the United States to arrange an amicable *modus vivendi* between the petitioners and Costa Rica have failed.

Under these circumstances I submit that it is the duty of the United States to inform the government of Costa Rica that any further interference by that Republic with the persons or property of the petitioners and their employees will be considered by the United States as an unfriendly act.

It is, I submit, always the duty of the United States to protect the citizens of that country against the unlawful violence of other governments, and to obtain redress, if possible. To use the language of Mr. Bayard, Secretary of State, to Mr. Merrill, in 1887, American citizens "must be protected in their persons and property by the representatives of their country's law and power; and no internal discord must be suffered to impair them." (Foreign Relations U. S. 1894, p. 1167.)

But this duty becomes especially clear in regard to injuries done our citizens by a foreign power within the limits of the Republic of Panama. By treaty with that Republic, the youngest and weakest in the family of nations, the United States of America guaranteed and agreed to maintain its independence. This must necessarily be considered as a guaranty of its independence throughout its whole territory. Otherwise the integrity of the Republic might be frittered away till only a shadow be left.

The neutrality and independence of Belgium is guaranteed by the great powers of Europe. No one would suppose for a moment that Germany would be allowed to seize one slice and France another under pretext that Belgium still remained intact at Brussels.

I submit respectfully, but firmly, that the honor of the United States is deeply involved in the cause I plead. That little Republic of Panama is unable to protect American citizens in the pursuit of peaceful industries within its borders. A great American historian has truly said that "a government touches the lowest point of ignominy when it confesses to an inability to protect the lives and property of its citizens" (John Fiske, "Critical Period of American History," p. 161).

The only answer it seems to me that can be made to this argument is that the land in question is disputed territory, and claimed by Costa Rica. To this there are two answers:—

1. The Constitution of the Republic of Panama, published February 15, 1904, describes its northern boundary as including the land in question. The guaranty by the United States to the Republic must be understood as guaranteeing this boundary. If not, what boundary does it guarantee? The government of the United States has heretofore taken this view of the subject. An official map, published by the War Department,\* shows the northern boundary of Panama as including the land in question.

2. Before the independence of Panama, the boundary between Co-

\* Map of the Republic of Panama prepared in the War Department Office of Chief of Staff, Second (Military Information) Division General Staff, U. S. Army, January, 1904.

lombia and Costa Rica was in controversy between them. By treaty dated November 4, 1896, they agreed to refer this question to the decision of the President of the French Republic. By this treaty the award was to be final, and to have the effect of a treaty between the two contracting parties.

On the eleventh day of September, 1900, President Loubet made his award. The boundary fixed by the award is that claimed by the Constitution of Panama, already mentioned. On this award as a final judgment the petitioners relied, and had a right to rely.

In support of this proposition I invoke the policy of the United States ever since the Jay Treaty with Great Britain, in 1794. In many instances since then our government has agreed to submit to arbitration questions of the greatest importance. These awards we have claimed when in our favor. When against us, we have complied with them. It has become a principle of international law as understood in this country that such awards have all the sacredness between nations that judgments of the highest Court have between individuals.

In the memorials submitted herewith the facts are stated more in detail. I have summarized them in this letter, and I appeal with confidence to you for that protection to the just rights of my clients which has thus far been denied.

I am, with very great respect,

Very truly yours,

EVERETT P. WHEELER.

UNITED STATES OF AMERICA,  
DEPARTMENT OF STATE.

IN THE MATTER

OF

THE MEMORIAL OF THE AMERICAN BANANA COMPANY,  
A CORPORATION DULY INCORPORATED UNDER THE  
LAWS OF THE STATE OF ALABAMA, OF WHICH HER-  
BERT L. McCONNELL, AN AMERICAN CITIZEN, IS PRES-  
IDENT, AND OTHER AMERICAN CITIZENS ARE THE  
STOCKHOLDERS, FOR REDRESS FOR PROPERTY SUM-  
MARILY SEIZED WITHOUT PROCESS OF LAW, AND LAW-  
FUL BUSINESS INTERFERED WITH ON THE SIXOLA  
RIVER, NEAR THE BOUNDARIES OF THE REPUB-  
LICS OF COSTA RICA AND PANAMA.

To the Honorable the Secretary of State,  
Washington, D.C.:

*Sir*,—The American Banana Company, a corporation duly organized under the laws of the State of Alabama, of which Herbert L. McConnell, a citizen of the United States, is President, and other citizens of the United States are the stockholders, respectfully shows as follows:

We refer particularly to the memorial to the Department of State which our President, Herbert L. McConnell, filed in this matter on our behalf on December 22nd, 1904, and the favorable action of the Department thereon. Such action was expressed in instructions to Mr. Merry, the Minister of the United States at Costa Rica, dated February 8th, 1905 (No. 619). Said instructions were in part as follows:

"You will say to the minister" (of Costa Rica) "that the Government of the United States is not making any intervention in the matter, reserving the whole subject for fuller consideration should that become necessary, but you are simply acting in the way of good offices, with the earnest hope of the Department that some satisfactory *modus vivendi* may be arranged between McConnell and his associates, on the one hand, and the Costa-Rican Government, on the other."

"You will cable briefly the substance of the Costa-Rican Reply."

On March 8th, 1905, we were informed by telegram of the Costa-Rican

Government's promise to the State Department through Minister Merry to enter into a *modus vivendi* with us or our agent upon arrival at San José. Mr. McConnell thereupon went to Costa Rica, and with other representatives of the company for two and a half months labored to obtain the promised *modus vivendi*, but without any result. We therefore ask that such steps may be taken as to you may seem proper, to obtain for us the promised mutually satisfactory *modus vivendi*, and such further relief as may be just. In this connection it seems to us desirable to give some further account of the negotiations which took place to procure a *modus vivendi*, and of the objections which have been taken to our obtaining the relief which we have asked.

## I.

### STEPS TAKEN TO PROCURE *Modus Vivendi*.

Mr. McConnell reached San José on March 29th, Mr. O. F. Dolder, who represents our Central American interests, having joined him at Port Limon. On the following day they conferred with Minister Merry and our attorney, Mr. Ricardo Jimenez, and on the 31st, accompanied by Mr. Jimenez, had an interview with Mr. Astua, the Minister of Foreign Relations and Public Works.

#### (a) Various Proposals for a *Modus Vivendi*.

Mr. Astua persistently declined to submit a proposition for an agreement, insisting that we do so, hence on April 3rd we submitted a proposal, a copy of which we herewith attach (Enclosure No. 1). We also attach copies of our proposals of April 17th (Enclosure No. 2), May 3rd (Enclosure No. 3) and May 25th (Enclosure No. 4). On April 12th, May 19th and May 22nd, 1905, respectively, the Costa-Rican Government submitted Counter Proposals (Enclosures Nos. 5, 6 and 7), and in an interview on June 3rd their minister Mr. Astua stated that his Government would not recede from the main propositions embodied in these proposals.

In regard to the proposals made in behalf of the American Banana Company it is perhaps enough to state that they were drawn with a view to meet the suggestions of the State Department, and generally with the explicit approval of Minister Merry. Such an approval appears in his letter of April 23rd, 1905 (No. 1037), addressed to the Hon. Francis B. Loomis, in which after referring to his Enclosure No. 1, the first proposal

for a so-called *modus vivendi* made by Costa Rica, he continues as follows:—

"Enclosure No. 2 copy of my reply thereto, joining with Mr. McConnell in its rejection and stating my reasons therefor, also enclosing a memorandum of a *modus vivendi* the terms of which were arranged by Mr. Jimenez and myself fulfilling in my judgment the equitable requirements of the case." . . .

We would add further that we afterward offered to withdraw the sixth clause of that proposition, which was perhaps open to criticism.

The propositions of Costa Rica, on the other hand, practically proposed that original grants of land be made by the Government of Costa Rica on terms so hard as to be impossible. None of them could have been considered as a *modus vivendi*. Concerning the first of these Costa-Rican propositions Minister Merry wrote to the Costa-Rican Minister on April 18th, 1905, as follows (see Enclosure No. 2 of Mr. Merry's letter to Mr. Loomis, No. 1037):—

"After carefully reading the proposed concession it seems to me properly applicable to a long occupation of government public lands, with ascertained title to permanent sovereignty. But it cannot in any proper conception be considered a *modus vivendi*, which is all that I am instructed by my Government to obtain for Mr. McConnell *et al.*, and it appears to me all that he can accept under the doubtful conditions of title and sovereignty above alluded to."

The full text of this letter is given in Enclosure 8.

#### (b) Analysis of Costa Rica's Proposals.

Taking these Costa-Rican propositions up more in detail, it appears that the first one, submitted April 12th, 1905 (Enclosure No. 5, Clause 1) is called a lease, and is in fact a lease with an annual rental. Thus Costa Rica's rights of sovereignty are assumed at the outset.

Clause 2 specifies the area. 2,000 hectares of land, to be divided into lots of 500 hectares each, leaving alternate lots of half that extent for the Government. That would mean the abandonment of one-third of the plantation, as the land is planted continuously.

Clause 3 reserves the right to cancel the lease, if the lessee fails to cultivate.

Clause 4 provides for the reversion of lands and improvements to Costa Rica at the end of term without any remuneration to us.

Clause 5 requires us to pay to Costa Rica full duties, if we wish to redeem our confiscated goods.

Clauses 6, 7 and 8 provide that for twelve years we pay all the expenses of erecting the buildings necessary for the Costa-Rican Government to be installed at Gandoka, and pay "the salaries of the staff of the local government police, and custom house, without any exception"; also that the material for the railroad shall pay half duties.

These provisions are all impossible, because they assume the sovereignty of Costa Rica over this region, which your petitioners cannot assent to. They are equally impossible from a practical standpoint.—the provision that full duties be paid on the railway supplies confiscated, namely, 3½ colones per kilo, or more than \$16 per ton, and that half this rate be paid on future railroad supplies, is prohibitive.

The copy of letter attached (Enclosure No. 9) from Messrs. F. J. Alvarado and Company, prominent steamship agents, and receiving and forwarding merchants, dated Limon, June 12th, 1905, shows that all railway supplies for the Costa Rica R.R. and the Northern Railway, which are the only public railroads in Costa Rica except one on the Pacific belonging to the Government, are exempt from duties.

Both of the railroads are owned or leased by the United Fruit Company. An example of one of these exemptions is given in Enclosure 10, annexed.

In the second proposal of Costa Rica, called a "tolerance" and dated May 19th, 1905 (Enclosure No. 6), Mr. McConnell, with whom the contract is made in behalf of your petitioners, is required to state in Paragraph Sixth that he is "convinced that he lacks all right to the possession, cultivation or other use whatever of the lands in question" and to admit the justice of the confiscation of your petitioner's property by Costa Rica. The first clause allows the work to proceed at the plantation till August 31st, 1906, and confines the permission to places where the bananas are one year old.

The third clause compels Mr. McConnell to lease at that time, or pay 10,000 colones for another year's tolerance with the consent of Costa Rica.

The fourth clause provides that the tolerance will be terminated by the ratification of the Guardia-Pacheco treaty, by "the adjudication to third parties of said lands by virtue of pendant filings," or the practice of contraband in Gandoka by McConnell or any of his employees. Clause fifth requires that McConnell pay Costa Rica within fifteen days 40,000 colones for duties on building materials and machinery, and he must agree to pay duties on all other imports. Clauses sixth and seventh provide that Costa-Rican officials shall supervise loading and unloading, McConnell paying their salaries; clause eighth, that McConnell shall not, under any circumstances, be allowed to recover moneys paid to the Costa-Rican Government

pursuant to the agreement. Clause ninth requires McConnell to abandon all claims against Costa Rica for seizure of his goods, and to submit the "interpretation of results of the tolerance . . . to the courts of the Republic, discarding completely the course of diplomacy."

In short, this agreement or tolerance gave McConnell the right to remain undisturbed on the property, where the plants were one year old, for about a year, abandoning land planted within a year and other lands prepared for planting at considerable cost. For this right he was required to acknowledge that he had no rights in this territory except as given by Costa Rica, pay 40,000 colones and the salaries of the Costa-Rican officials, and agree to give up all claim for indemnity by reason of the seizure of his goods by Costa Rica. Even the meagre rights McConnell received would be forfeited if the boundary treaty between Panama and Costa Rica were ratified or some one in his employ, unknown to him and in spite of the vigilance of the customs officials paid by him, committed some act of smuggling. They would also be forfeited if the land were adjudicated to other parties by virtue of pending claims. The pending proceedings by the United Fruit Company to obtain a denunciation from Costa Rica would be included in this reservation, and the reservation was undoubtedly drawn with them in mind.

Thus your petitioner's claims were made entirely subject to the Costa Rica courts, and in addition to that we were required to forego the assistance of our Government if a dispute arose under the agreement. Under any circumstances Costa Rica was to get rid of the large claim for damages, and retain an exorbitant money consideration. Such an agreement cannot be considered a serious effort to arrive at a *modus vivendi*, and was a contemptuous treatment of your petitioners, supported as we were by the good offices of the United States Government. In the whole course of the negotiations no proposition was offered by Costa Rica which could lay claim to being in any way a *modus vivendi*.

The phraseology and general terms of the Government's proposed agreement submitted May 22nd (Enclosure No. 7) was very much the same as those of that submitted May 19th, except that the term is extended from fifteen to twenty-four months and the extent of the cultivations increased from 1,200 to 1,500 hectares of land. Paragraph 4 of this reads as follows:—

"That the Costa-Rican Government has heard his petition and has declared that the petitioner has no right whatever to the said lands, that they cannot recognize therefore any right whatever derived from the fact of his possession because such possession has its source in the

ignoring of the sovereignty of Costa Rica in that part of this territory, but that the Government to avoid as far as possible the losses attendant on the abandoning of the plantation and its annexes, while the petitioner is seeking to obtain, in legal manner, from whomever it may concern, the ownership or lease of the occupied area, is willing to grant him the permission aforesaid; it being fully understood that the said permission does not improve in any way the actual situation of the enterprise of McConnell, neither in respect to the absolute ownership of Costa Rica in those lands, nor in respect to the titles to these lands which may be vested in private persons nor in respect to the rights of third parties derived from denunciations already made; because the said permission only means that the State declares that they will not, during the said term, exercise against McConnell their right of excluding him from these lands, and means, too, the permission given him to make use of the fruits of the plantation."

(c) Further Negotiations in Regard to Proposals.

When we advised Mr. Merry that we could not accept the Government's proposition, Mr. Merry suggested to Mr. Jimenez that he draft a proposition for an agreement entirely fair and equitable to both parties, which was done, and after its approval by Mr. Merry it was on May 25th presented to the Government and a copy left with the former.

Some negotiations ensued, in the course of which the Costa-Rican Government insisted that the petitioners should release all claim to damages for the injury already done him and his associates, and should submit the question of title to the courts of Costa Rica. But Mr. McConnell could have seen no justification for either requirement. As to the first, the damages already caused have been great, and ought to be reimbursed. As to the second, the very question at issue between the parties is whether the land to the north of the Sixola River belongs to Costa Rica. The jurisdiction of the courts of that Republic so far as the land itself is concerned, depends upon the decision of this primary question. It ought to be, and in fact has been, settled by an impartial arbitration adversely to the claim of that Republic. On what possible ground, then, can your petitioner be required to submit it to the Court of Costa Rica, one of the parties to the original controversy, for its exclusive decision? If any court is to decide the question, it should be a court of the United States of America, of which country the contending parties are citizens.

Some of these considerations were urged upon Mr. Astua by Mr. Merry and Mr. Jimenez, and finally Mr. Astua verbally conceded what was asked on all points except that of renunciation of the claim for damages. But,

when on the 22nd he submitted a draft of an agreement already referred to (Enclosure 7), unexpected and unjust conditions were embodied, one of which provided that at the expiration of two years we abandon the lands, cultivations, railroad, port improvements, buildings, etc., which made it out of the question for us to agree to this proposition, aside from the requirement that we renounce our claim for damages without a consideration. On several occasions we reached what appeared to be practically definite understandings with Mr. Astua, but, when his drafts of proposed agreements were presented, they were so worded that the verbal understandings were scarcely recognizable, and their acceptance in every case without exception would have been ruinous.

It is true that on May 27th it again appeared possible to reach an understanding with the Costa-Rican Government; and on that date we again requested Mr. Merry to cable the Department regarding the matter of renunciation of the claim for damages, but he declined on the ground that he could not afford to cable regarding a matter concerning which he was already informed, and also on account of the expense, saying that he did not know whether our case should be regarded as an urgent one, and that he was in doubt as to whether it would be proper to permit us to defray the cost.

Mr. Astua stated in his verbal proposition of June 3rd, as shown by Clause 3 of Mr. Jimenez's letter (Enclosure No. 11), which proposition as explained by Mr. Jimenez was intended to include an adjustment of our claim for damages, that the Government insisted that the tribunals of Costa Rica have at once exclusive jurisdiction regarding the question of title to the lands, without awaiting the ratification of the pending treaties, although he had on May 26th agreed to accept a clause to the effect that the agreement would not prejudice the rights or title of third parties.

Clauses 4 and 5 of this final proposition of Costa Rica provide that the arrangement could never continue more than ten years, even though at the end of that period the sovereignty of the territory had not been determined, and that, if terminated for any reason, we must abandon the lands altogether with all the improvements.

The acceptance of any one of Costa Rica's four propositions would unquestionably have resulted not in saving us from additional losses, as was the purpose of the Department in requesting for us a *modus vivendi*, but in greatly increasing them; since, according to the provisions in all of those propositions, it would have been possible to have summarily brought about a termination of the arrangements, without compensation to us,

after we had spent many additional thousands of dollars in construction of the railroad and harbor improvements.

## II.

THE POLICY OF THE STATE DEPARTMENT HAS BEEN LAID DOWN THAT THE COURTS OF COSTA RICA AT THE PRESENT TIME SHOULD NOT DETERMINE THE TITLE TO THE LANDS IN QUESTION.

The point has been taken by our opponents several times during the course of these proceedings that the State Department should take no steps to secure a *modus vivendi* for your petitioner, if any one else claimed the lands.

From the Department's despatches of May 12th and 27th to Mr. Merry we infer that it is not its desire, at least at this time, to consider the question of title. The despatches referred to read in part as follows:—

That of May 12th:—

"The object of the *modus vivendi* should be to preserve the *status quo* and the property of Mr. McConnell or of the corporation he represents until the boundary question shall have been settled by the ratification of the treaty between Panama and Costa Rica, when the parties would have to resort to the courts of the State within whose jurisdiction the lands lie for the hearing and decision of the title to the property in question."

That of May 27th:—

"The contest between Mr. McConnell and others over the title to lands along the Sixola River is one that belongs to the courts having jurisdiction. The Department cannot undertake to try to settle their conflicting claims of title, and the parties will have to resort to their legal remedies. The Department only contemplates a *modus vivendi* until the question of disputed sovereignty should be finally settled between the Governments of Costa Rica and Panama."

Moreover, as far as any claims that have hitherto been brought forward are concerned, the question of title involves also the question of sovereignty and the determination of the boundary line between Costa Rica and Panama. Your petitioners claim title to this property through the laws of Colombia and Panama. The United Fruit Company claims title through denunciations allowed by the Government of Costa Rica. If the land is not a part of Costa Rica, the latter title will be void and Costa Rican Courts should certainly not determine its validity.

It seems, however, necessary to take this matter up, because Minister

Merry laid stress upon certain denouncements granted to the Astua family, and by them assigned to the United Fruit Company. Mr. Astua, the Costa-Rican Minister, with whom all our negotiations took place, is the head of this family and one of those to whom the denouncements were made.

In order that Mr. Merry might understand that the Department was aware of the United Fruit Company's claim of title to our lands before Mr. Hay instructed him in his despatch of February 8th, 1905, to use his good offices to obtain a *modus vivendi* for us, we showed him during the month of April, 1905, and again at his request on May 5th, a copy of Mr. Jas. M. Beck's letter of February 3rd, 1905, to the Department, reading in part as follows:—

"I have the honor to acknowledge the receipt of your letter of January 9th with reference to the application pending in your Department on behalf of Mr. H. L. McConnell, in which you further say:

"The Department will, however, give due consideration to any communication which you may desire to make showing that Mr. McConnell does not own the lands and property mentioned, and would therefore not be entitled to the protection of his Government against arbitrary and illegal molestation on the part of the Costa-Rican authorities.

.....  
"The United Fruit Company further aver that under the laws of Costa Rica they have pre-empted, under what is called the 'Astua Denouncement,' the title to a large extent of territory along the banks of the Sixola River, including in whole or in part the lands unlawfully occupied by Mr. McConnell, and the Company therefore claims a superior title to any pretended title of McConnell. The proof of their right to the lands in question is on file among the public records of Costa Rica, and I request an opportunity to submit such proof to you before you pass upon McConnell's application. The Secretary of the United Fruit Company has cabled to Costa Rica to secure certified copies of this 'Denouncement,' showing the superior title of the United Fruit Company to the lands in question."

At the same time we pointed out to Mr. Merry that the proposed *modus vivendi* could not in any way conflict with the interests of other American citizens, as it would not interfere with the action of the courts, in which Mr. Merry acquiesced. Nevertheless, on May 9th, Mr. Astua, Minister of Foreign Relations for Costa Rica, stated to our attorney, Mr. Jimenez, that on May 6th Mr. Merry called and informed him that he would

take no further action in our behalf unless he should receive instructions from the Department to do so. Mr. Astua further stated that Minister Calvo had advised that the State Department had informed him that no intervention was intended; that it was his opinion that our Government had abandoned our case, and that the President did not now fear intervention.

Mr. Merry seemed to feel further that, if the title to the land claimed by your petitioners were to be litigated in the Costa-Rican Courts by those opposing your petitioners' title, that would afford a reason why he should not try to secure a *modus vivendi* until the question of boundary was settled between Costa Rica and Panama. He wrote the Department on April 23rd (No. 1037):—

“Even if without merit, a contest involving prior acquired title might possibly take the case into the courts of Costa Rica and prevent further action on my part at the present time.”

This statement seems altogether inconsistent with the whole idea of a *modus vivendi*, which, we submit, was suggested by the State Department, because it felt that Costa Rica tribunals at this time ought not to settle this question of title which involved their own boundary. It also seems wholly inconsistent with Mr. Merry's note of March 8th, 1905, to the Costa-Rican Minister (Enclosure No. 12), which reads in part as follows:—

“Whatever may have been the *status* of the McConnell claim *vs.* Your Excellency's Government heretofore, the signing of the Panama boundary treaty on the 6th instant has in my judgment entirely changed it, indicating the advisability of prompt action to avoid useless and serious responsibility. Mr. McConnell should, it appears to me, be at once advised to hereafter address himself to the Panama Government when discussing his position at Gadoan and the lower Sixola Valley. It appears only an act of justice to himself and associates that Your Excellency's Government shall promptly permit him to proceed with his work subject to the control of the Panama Government for which the territory is temporarily occupied in trust by Your Excellency's Government, until the Treaty shall be approved by the Congress of Costa Rica and Panama. This course appears not only equitable, but will avoid reclamation for damages which must otherwise follow. For this reason I have respectfully suggested that I may be permitted to telegraph my Government that, ‘the boundary treaty being signed, the Government of Costa Rica no longer opposes or obstructs the work of Mr. McConnell and associates at Gadoan and Sixola.’ Assuring Your Excellency that my action is induced by my desire to avoid future contention, etc.”

Mr. Merry further stated in his despatch of May 21st, 1905, to the Department (No. 1050):—

"I have the honor to forward herewith a communication from Mr. John M. Keith, an American citizen resident here representing the political interests of the United Fruit Company, an American corporation, addressed to the Minister of Public Works of Costa Rica, asserting that Mr. H. L. McConnell, an American citizen, has violated his contract with said Company, as therein set forth, for which it has entered suit against him in the United States Courts. The protest of Mr. Minor C. Keith *et al.* against the action of Mr. McConnell was forwarded with my No. 1043 of May 7th, and I am since informed by Mr. John M. Keith that his Company is now also preparing complaint against McConnell *et al.*, to be presented in a Costa-Rican court of law with the purpose of forcing McConnell to abandon his work in the Lower Sixola Valley. Under these circumstances, and having in view Diplomatic Instructions, page 67, Section 173, which distinctly state that diplomatic representatives 'should take no part in litigation between citizens,' it seems to me that my official action in connection with the case is no longer proper. There has not yet been time to receive reply to my No. 1043 of the 7th instant, and meanwhile I have aided Mr. McConnell as best I could to obtain a *modus vivendi*, considering your former instructions temporarily in force."

In this connection special attention should be called to the fact that the proposed *modus vivendi* is not for account of McConnell personally, but to be made with him as the representative of the American Banana Company, to the stock of which more than one hundred American citizens are subscribers, who have invested their money in the undertaking in good faith, feeling that there was no doubt whatever as to the question of sovereignty and title to the lands, and that the only unusual risk involved was the necessity of competing with the United Fruit Company, the well-known policy of which Company is to as far as possible monopolize the banana industry. But those stockholders did not anticipate any particular opposition from that source other than in the marketing of their products. It is true A. W. Preston and others, representing United Fruit Company interests brought suit on November 30th, 1904, in the United States courts in Mobile, Alabama, in an effort to enjoin McConnell from continuing in the presidency of and as a stockholder in the Banana Company, which suit is based on McConnell's agreement not to compete with the United Fruit and Camors-McConnell Companies. In explanation of McConnell's failure to keep his agreement not to compete with the Companies named, we beg to state that the United Fruit

Company had, long before he broke his agreement, wholly disregarded their agreements made with him at the same time. As stated, however, that matter is now in the United States courts for adjustment.

A suit on account of the same contract was begun in the Costa Rica courts on May 31st, 1905, notice of which was served on McConnell on June 10th, the day before he left San José, the delay in service evidently being for the purpose of detaining him. A copy of the complaint is annexed hereto and marked Enclosure 13.

This is the suit referred to in that part of Mr. Merry's despatch to the Department of June 17th, 1905, reading:—

“Before the departure hence of Mr. McConnell on the 11th instant, he was served with official summons from Costa Rica court relating to his disputed rights in the Sixola Valley. The question being now formally in litigation before the local tribunals, I shall take no further action therein unless under instructions.”

The suit above referred to by Mr. Merry has nothing whatever to do with the question of title to the lands, but, even if it had, the Costa Rica courts according to the Department's despatches of May 12th and 27th, mentioned above, are not the proper tribunals to try the question unless and until hereafter by treaty the territory should become Costa-Rican soil. There is no probability that this will be the case, since on March 6th of the present year the representatives of the Governments of Costa Rica and Panama signed treaties formally declaring the Loubet Award of September 11th, 1900, decisive of boundary questions by which it was fixed as Colombian (now Panamanian) territory.

A *modus vivendi*, such as the Department requested the Costa-Rican Government to make with us, and which that Government agreed to make, could in no way affect the action of the courts in relation to the question of title to the lands or the United Fruit Company's action against McConnell personally.

### III.

#### VALIDITY OF THE COSTA-RICAN DENOUNCEMENTS.

We do not suppose that the Department wishes to take up the validity of the Astua denouncements granted by Costa Rica, which we claim are wholly invalid, even assuming the sovereignty of Costa Rica over the territory in question.

If the Department should wish to consider that subject, we will submit a statement of the facts relating to it, substantiated by certified copies of the denunciation proceedings.

## IV.

## PANAMA'S EXERCISE OF JURISDICTION OVER THE DISPUTED TERRITORY.

We believe that Mr. Merry has underestimated Panama's assertion of jurisdiction over the disputed territory. He states in his despatch to the Department of February 24th, 1905:—

"One point that Mr. Coxe presents as important to his contention is, in my opinion, of no value. I refer to the clearance of the Steamship 'Orn' for Port Gadocan by the Panama officials at Bocas del Toro. A maritime clearance has no value as proving sovereignty of the port for which a ship is cleared. It is not contended that when the Collector of the Port of New York grants a clearance for Liverpool that the latter port is under American jurisdiction. The document merely permits the 'Orn' to 'clear' and 'weigh anchor' for Port Gadocan. The same clearance would have been granted for Limon, Costa Rica, if requested. No pretence is found in the clearance that Gadocan is under Panama jurisdiction and there is no pretence of permission to discharge cargo there. Consequently the action of the Supreme Government of Panama in approving the two hundred dollar fine against Dolder & Co., for bringing a Syrian from the temporarily Costa-Rican port of Gadocan, is not contradicted by the clearance from Bocas del Toro by Panama officials of a ship bound to the same port."

In his despatch of October 9th, 1904, to the Department Mr. Merry wrote:—

"I beg to forward herewith copy and translation of a permit from the Inspector of the Port of Bocas del Toro, Republic of Panama, authorizing the Steamship 'Orn' to proceed to Gadocan to discharge her cargo. The clearance is not specified as being 'Coastwise' or 'Foreign'; but, if the latter, would be *illegal* for the reason that Port Gadocan has not been declared open to commerce by the Government of Costa Rica which is now in possession. The document is forwarded at the suggestion of Mr. McConnell."

The clearance referred to, which on its face is altogether informal and not such as would be in order if the vessel were being cleared for a foreign port, reads:—

"Inspector of the Port, Present: Please grant permit Str. 'Orn' in charge of her captain, Mowindle, may weigh anchor for the place 'Gadocan' (Sixola). Bocas del Toro, July 22, 1904. Otto F. Dolder, per Grabowski. 'Weigh anchor'—Inspector of the Port—(signed) C. Clement."

In order, however, that there may be no doubt whatever as to the fact that the "Orn" was cleared for Gadocan as a home port, we enclose herewith a certificate (Enclosure No. 14) from the Inspector of the Port Bocas del Toro, Panama, of May 6th, 1905, to the effect that three Panama customs officers were placed on board the S.S. "Orn" for the purpose of superintending the discharge of her cargo at Gadocan. The Governments of Colombia and Panama since April, 1903, up to and including July 22nd, 1904, when the "Orn" was cleared for Gadocan, repeatedly cleared our launches for that port, treating it as domestic. Since that time the Costa-Rican soldiers have stopped all operations on our part. The Panama Government has, since the discharge of the "Orn's" cargo, claimed \$10,149.90 Colombian currency, as duties on her cargo, and continues to insist on its collection, as shown by the enclosed copy of an edict of April 27th, 1905 (Enclosure No. 15), published in the *Official Gazette* of Panama on May 23rd, 1905. We have protested against the payment of this bill on three accounts: first, our concession provides that all railway supplies imported for the construction of the road connecting Gadocan with the Sixola River will be exempt from duties; second, the Panama Government published in the *Official Gazette*, in the City of Panama on July 12th, 1904, a law exempting all railway supplies from duties, which law went into effect in that City on the 15th, or seven days prior to the entrance at the custom-house of Bocas del Toro of the "Orn's" cargo; third, that Government has not protected us in the control and use of the cargo, the greater part of which, or all that was discharged at Gadocan, having been confiscated and being still held by the Costa-Rican Government.

#### CONCLUSION.

The sum of the whole matter is this:—

There was a controversy between the United States of Colombia and Costa Rica as to the boundary between them. By treaty dated November 4th, 1896, they agreed to submit this controversy to the decision of the President of the French Republic. Article 4, paragraph 6, of this treaty contains the following clause:—

"The Arbitrator's decision, whatever such may be, will itself serve as a complete and binding treaty between the two high contracting parties, and will admit of no appeal whatever. Both parties bind themselves to a faithful fulfilment and to resign all claims against the decision, staking thereon their national honor."

On the eleventh day of September, 1900, President Loubet made his award. This determined that the strip of land to the north of the Sixola River and between it and the spur of the Cordillera, which runs from Monkey Point on the Atlantic Ocean, belonged to the United States of Colombia.

When the Republic of Panama was formed out of Colombia, its Constitution published February 15th, 1904, described its northern boundary to be that fixed by the arbitral award before referred to. The United States of America by treaty with this new Republic guaranteed and agreed to maintain its independence. This must necessarily be considered as a guaranty of its independence throughout its whole territory. Relying upon the above-mentioned award of President Loubet, Mr. McConnell the present president of your petitioner, in conformity with the laws of Colombia and Panama, entered upon certain uncultivated lands within the strip before mentioned, and established thereon residences and artificial cultivation. After the independence of Panama and relying upon the international proceedings above set forth, other American citizens joined with the said McConnell in his undertaking, and formed the American Banana Company, and took further steps in improving and cultivating said land. They thus acquired the right of property in the same. This property has been arbitrarily and illegally interfered with by the Republic of Costa Rica.

So far has that Government gone as to refuse to permit the salving of a lighter load of railway supplies that was sunk at Gadoan in July, 1904, and by preventing in April, 1905, under threat of arrest and imprisonment, as shown by a copy of the certificates of Messrs. Woolley, Adams & Herrera (Enclosure No. 16), the removal to a place of safety of railway material on the beach, a portion of which was on that account washed into the sea and lost. At our request, through Mr. Merry an order was issued later, permitting the removal to a place of safety of the remainder of those supplies. Your petitioners ask the protection of their Government. Their agents and employees have been forcibly dispossessed by the Government of Costa Rica. All endeavors to bring about a *modus vivendi* have failed. Your petitioners therefore ask that the United States of America inform the Government of Costa Rica that such interference

will no longer be tolerated, and that it requires that the petitioners be restored to the peaceable possession of the land they have occupied north of the Sixola River, that Costa Rica refrain from all further interference therewith, and that, if any controversy should arise between your petitioners and any other American citizens concerning their respective interests therein, it should be decided by the Courts of the United States, to whose jurisdiction such a controversy properly belongs.

Our resources, which are not great, are being rapidly exhausted through loss outright of a portion of our railway supplies, the damage through exposure on the beach of the balance, the heavy cost of maintaining the plantation in order to preserve the improvements already made, the loss of the entire products, an immense amount of fruit having already matured and gone to waste since the beginning of the present year. Within a few months the entire plantation will be in full bearing, when the production should reach 75,000 bunches of bananas or more per month. The loss then in fruit, including the cost of production and a reasonable profit, will amount to at least \$45,000 per month.

As heretofore stated, more than one hundred American citizens, all of whom subscribed in good faith, are interested in this undertaking, in which \$250,000 has already been spent, the loss of whose money would prove a great calamity to quite a number of them. We ask and confidently expect, now that Costa Rica has failed to keep its promise to make a reasonable arrangement with us, that our own Government will take such steps as may be necessary for our protection.

Dated July 28, 1905.

Respectfully submitted,

AMERICAN BANANA COMPANY.

H. L. McCONNELL,  
Pres.

EVERETT P. WHEELER,  
*Of Counsel for Memorialist,*  
21 State Street, New York City.

DISTRICT OF COLUMBIA, } ss.  
CITY OF WASHINGTON, }

HERBERT L. McCONNELL, being duly sworn, says: I am the president of the American Banana Company. I have read the foregoing memorial

and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on information, and as to those matters I believe it to be true. The sources of my information arise from my familiarity as President, with all the matters relating to the American Banana Company.

HERBERT L. McCONNELL.

Sworn to and subscribed to before me  
this 28th day of July, 1905.

(SEAL) ANTHONY L. RAY,

*Notary Public,*

D.C.

COMMUNICATIONS TO AND FROM THE STATE DEPARTMENT  
AFTER McCONNELL'S SECOND MEMORIAL.

[COPY.]

AMERICAN LEGATION TO COSTA RICA, NICARAGUA, AND SALVADOR,  
SAN JOSÉ, COSTA RICA, January 29th, 1906.

To His Excellency Senor Don José Astua Aguilar,  
Minister of Foreign Relations, etc.,  
Republic of Costa Rica, San José:

*Esteemed Sir,—*I have to call the attention of Your Excellency's Government to a cablegram received yesterday from the Honorable Secretary of State at Washington in relation to the *status* of the "American Banana Company," H. L. McConnell, President.

Said Company, as will be observed by Your Excellency, enters complaint of its eviction from the Sixaola Valley and Port Gadokin and the seizure of its property there by the Government of Costa Rica.

When our voluminous correspondence and numerous interviews in relation to this case were closed in the early part of 1905, I hoped that before this the question as to the sovereignty and legal jurisdiction over the Sixaola Valley and Port Gadokin would be settled between Your Excellency's Government and that of the Republic of Panama. But a year has elapsed, and no action known to me has been taken in the premises by either Government. A decision as to the ultimate sovereignty and consequent permanent occupation of the territory would greatly facilitate the settlement of the Company's rights upon a basis of equity and justice. The cablegram received from my Government enters into such detail regarding its position in the case that I can do no better than to quote it, calling to the attention of Your Excellency the closing sentence thereof advising that a similar communication has been sent to the Government of the Panama Republic, which I presume will address Your Excellency's Government in connection therewith.

Meanwhile permit me to call Your Excellency's attention to this case with the view of such a solution as will protect the interests of American citizens involved and agreeable to the Governments interested in the Sixaola Valley and Port Gadokin.

The cablegram alluded to reads as follows:—

"Referring to questions affecting 'American Banana Company,' it is represented that the Company is suffering through eviction and seizure of their property in the disputed (Sixaola) territory. You will say that, while we do not contravert the power of Costa Rica and Colombia or Panama in making a provisional agreement respecting administration of that territory pending the definite settlement of its ownership, we do not cede the power of the provisional administrator to execute judgment in the capacity of Sovereign until the sovereignty of the territory is adjudicated and the Courts of the Sovereign have passed upon the matters involved. Nor do we cede the right of either to prejudice the ultimate rights of American citizens therein by adverse action in advance of such definite adjudication. This Government does not undertake to determine the conflicting claims of title made by this Company and by other American citizens, but will reserve in behalf of any injured American citizen, as against either Costa Rica or Panama, all rights which pertain to the territory and for the infringement of which its rightful Sovereign may be found responsible. A similar communication is made to the Government of the Republic of Panama."

Be pleased, Mr. Minister, to receive the assurances of my most distinguished consideration, and permit me to subscribe myself

Your Excellency's most obedient Servant,

(Signed) WILLIAM LAWRENCE MERRY,  
E. E. and M. P. U.S.A.

No. 1142.

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AMERICAN LEGATION TO COSTA RICA, NICARAGUA, AND SALVADOR,  
SAN JOSÉ, COSTA RICA, March 7, 1906.

TO THE HONORABLE ELIHU ROOT,  
Secretary of State, Washington, D.C.:

*Sir*,—I have the honor to forward herewith (Enclosure No. 1) copy and translation of the reply of the Costa Rica Minister of Foreign Relations to my despatch of January 29th, communicating to him your cablegram of January 27th relating to the complaint of the "American Banana Company." The answer will be noted as prolix and discursive, adding nothing to the subject not already understood, and, in my judgment, defaulting in the claim to such sovereign jurisdiction over the territory alluded to as could be asserted, had said territory not been in dispute between Colombia and Costa Rica, for it is undeniable that either by the Loubet Award or by the

Pacheco-Guardia boundary treaty, now pending with Panama, the territory in question will ultimately be placed under the sovereign jurisdiction of the Panama Republic. The Minister appears not to comprehend the main purpose of your cablegram, which obviously intends to reserve the rights of any American citizen as against the ultimate sovereign of the territory, whenever that sovereignty may be decisively settled. His conclusion, however, has the merit of correct statement. Mr. McConnell was about reaching a *modus vivendi*, which I had been instructed by the Honorable Secretary of State, Mr. Hay, to aid him in obtaining, when, over night, he decided to insist on the right to place an additional area under cultivation, thus changing the *modus vivendi* for a *modus crescendi*, and therein I cannot justly find fault with the Minister for declining. It was not, in fact, a claim in accordance with my instructions or with the intent of Mr. Hay. The enclosure being a reply to my despatch, and the entire question having been already amply discussed with the Minister, both verbally and in written communications, I deem it best to permit the question to rest at present until you think proper to send me further instructions or until the *status* has been changed by the action of either the Panama or the Costa Rica Governments.

WILLIAM LAWRENCE MERRY,  
*American Minister.*

ENCLOSURE:

Minister Astua to Mr. Merry.

No. 1142.

[TRANSLATION. ENCLOSURE NO. 1.]

OFFICE OF SECRETARY OF FOREIGN RELATIONS,  
SAN JOSE, 3d of March, 1906.

Mr. MINISTER :

I respectfully refer to the polite note under date of January 29th of this year, in which Your Excellency was kind enough to send me a copy of the telegram of the 28th of the same month, which your Government thought proper to address to you through the Honorable Secretary of State, referring to a claim of Mr. H. L. McConnell, fully discussed last year in writing and verbally, and which it appears should have been considered as entirely terminated, inasmuch as through the medium of the Costa Rica minister at Washington, and also before the Legation, over which you preside with so much skill and merit, my Government explained the

facts of the case, and demonstrated that it had worked with indisputable reason and right, and since in the note of June 7th, 1905, the last received in this matter until now, I had the honor to communicate to you that the said gentleman voluntarily and by virtue of a change of purpose, the motive of which I have not succeeded in becoming acquainted with, had notified me, in person, that he had abandoned the pending negotiation solicited by him, although he had accepted already, in its larger part, as Your Excellency knows, the one under way. My Government being mindful of the friendly intervention of Your Excellency to establish a *modus vivendi* which, upon a basis of equity, without injury to the territorial sovereignty of Costa Rica or prejudice to third parties and within the possibilities of our fiscal law, would govern the occupancy by McConnell of the lands which he has endeavored to make his own in the zone of Gandoca and along the left bank of the river Sixola, by virtue of an usurpation of ownership, the features of which as a transgression against the national property are clear by any criterion, and which, at the same time, would lend itself by giving it a retroactive effect to relieve him of the charge which exists against him of having committed in the country acts of smuggling in its most serious form, that is the clandestine importation of merchandise by the Gandoca, which is not a port qualified by our laws for maritime traffic.

Your Excellency thought proper to call my attention to the circumstance that the Secretary of State in Washington communicated also the said cablegram to the Government of Panama, and even if the reply which the latter must give is obvious, in view of the fact that it is evident from authoritative documents that the said nation recognizes the total and exclusive jurisdiction, or in other words the sovereignty of Costa Rica in said lands, I thought it expedient to delay my reply to Your Excellency while awaiting the declaration which that Republic should make in this respect, and this explains why this office has delayed the reply to the important note which is the cause for the present one, which I have the honor of addressing to you, without my knowing as yet that which the Secretary of Foreign Relations of Panama may have seen fit to express.

In the cablegram cited, there appeared the following propositions, which I must treat separately and in the same order in which they are given by the Honorable Secretary of State:—

1. That the question under consideration in this incident refers to the American Banana Company;
2. That in the territory in dispute (that of the Sixola) my government has taken possession of some property of the said Company;
3. That at the present time there does not exist between Costa Rica

and Panama any arrangement governing the ownership and administration of the territory mentioned, while the boundary question is being definitely settled between the two countries;

4. That while the boundary is not established in a positive manner, the Government of the United States denies that Costa Rica or Panama possess faculty as sovereigns, to carry into execution judgments referring to the appropriation of such lands by their occupants, and that it does not admit either that the right which American citizens claim to have acquired, by alleging acts of their own consummated before the determination of the boundary, may in any form be affected by the exercise of territorial sovereignty of Costa Rica or Panama;

5. That the Government of Your Excellency does not undertake to determine the preference between the titles which the American Banana Company may allege, and the opposing titles that other American citizens may allege concerning the lands of the said zone, but that it reserves the right to protect any of them against the damage that may accrue to them from the territorial administration which Costa Rica or Panama might exercise in the premises.

With the high consideration due to the illustrious government of the United States, and maintaining for Your Excellency all the respect to which you are entitled, I shall now lay before you the observations of my government concerning every one of the points enumerated, in the certainty that they will suffice to make clear in the mind of the Secretary of State the justice of the case of Costa Rica, and also to show once more the correctness of the proceedings of my government in its relations with the foreigners who under the protection of its laws, yet in harmony with them, seek fields for industrial activity and for a place for its initiative, a correctness of proceeding which is not impaired by the slightest injury to the right of others, and which has gained for Costa Rica the high opinion in which it is held as a hospitable land amongst the nations which favor her with their friendship, and of which, it pleases me to believe, the Government of Your Excellency has positive proof in its dealings with this Republic.

Since your legation, without doubt, has taken note of the complete history of the McConnell affair, having had opportunity of following in detail its course, in the interviews that have taken place and by means of the pro memorias and other documents which in due season I thought proper to communicate to you, my task will not be long nor difficult, because it will be confined, to a great extent, to my referring to that which Your Excellency already knows and of which you possess documentary evidence.

*First Point.*

The Honorable Secretary of State of the Government of Your Excellency has been incorrectly informed as regards the personality of the claiming party. In Costa Rica no company is known that bears the name of "American Banana," nor has Mr. McConnell presented himself to my government in the character as president or manager of any company, a matter of which Your Excellency can convince himself by merely referring to the memorial addressed by him to this office on the 5th of April, 1905, which evidences with his own words that both when occupying the area to which the question refers, and when asking my government for the grant of a title which would give legal standing to the unlawful possession exercised by him, he acted for himself, and not for any other or others as jointly interested.

And although I do not attribute any very great significance to the fact whether McConnell, when infringing our customs laws and usurping state lands, did so in his own name and for his sole benefit, or as representative of the "American Banana Company," and for the benefit of the latter, yet it is proper that such a circumstance should not pass unnoticed, because it shows that in this part, as well as in the rest, the claimant did not relate the facts of the case with due exactness, having, on the contrary, shaped them for his intention to produce, with the most powerful government of Your Excellency, an impression favorable to his intention of making his own that which can lawfully become such only by way of an acquisition in conformity with our laws, and presented them so as to neutralize the acts of punishable importation committed by him.

*Second Point.*

It is true that the Costa Rican authorities, after learning of the fact that McConnell had usurped a considerable area of land belonging to the state and that, violating our customs law, he introduced merchandise by way of the unqualified port of Gandoca, ordered this gentleman, in compliance with their duty, to abstain from exercising acts of ownership on land which is not his and as a result of an unlawful traffic, seized the goods introduced by him with audacious contempt of our fiscal law; but both actions are the logical and necessary consequence of the exercise of the jurisdiction of the State within the territory that belongs to it, according to its present boundaries; a jurisdiction which, according to the principles of private as well as international law, implies, in order to be real

and actual, the right of exclusion and defence of one's property and the power of causing the laws of the Republic to become imperative for all who live therein. It is, therefore, evident that my government has not deprived the claimant of any property in Gandoca, because he did not possess any there; that its action has been confined, on the one hand, to preventing the continuance of usurpation of the national domain in a region which, at the present time, belongs to the public treasury, and which could not be taken by the irregular and unlawful means of an occupation *de facto*,—and on the other hand, to making effective the laws which govern smuggling in the importation of goods; which goes to show that an erroneous statement has been made to the government of Your Excellency, when it was informed that my government had appropriated any property of Mr. McConnell or of the said "American Banana Company."

### *Third Point.*

I likewise attribute to deficient information given by the claimant to the honorable Secretary of State, the assertion contained in the cablegram as to the non-existence at the present time of an arrangement between Costa Rica and Panama as to which of the two nations shall exercise the territorial sovereignty in the region of the Sixola, until the boundary treaty which is awaiting the approval of their governments and legislatures, shall determine definitely the boundary.

Your Excellency is well aware, in the first place, that, for a very long time, and by virtue of the *statu quo* in force between the two countries, the dividing line between them is that of the Sixola, Yurquin, and Rio Golfito, which leaves on the Costa Rica side the region to which McConnell refers, and in the second place that the government of Colombia before, during a long series of years, and now that of the Republic of Panama, consider said line as the frontier of the territory of Panama, as is clearly expressed in resolution Number 28 of the Office of the Secretary of State and Foreign Relations of the latter of said countries, issued on the 2nd of August, 1904 and published in its *Official Gazette* of the 23rd of the same month, which among other things says "Although by the arbitration decision handed down by the President of the French Republic, Gandokin (region of the Sixola) forms a part of the territory of Panama, this arbitration decision has not been carried into execution as yet, and as long as this does not take place, the Government of this Republic (Republic of Panama) does not exercise jurisdiction in that place, because the same is situate between the boundaries of the territory, the dispute over which gave rise to the arbitration decision, and because the *statu quo* agreed on

so demands it. Therefore the Costa Rican government is the present possessor of the place referred to, just as the government of Panama is the present possessor of a part of the Costa Rican territory on the Pacific. The execution of the arbitration decision will give to each sovereign the possession of the territory that belongs to it, and from that time forth the *statu quo* will cease; but as long as this does not take place, Gandokin will remain under the jurisdictional action of Costa Rica."

From what has been said, it follows that an effective and perfect arrangement exists, not of recent date, but existing for a long time, concerning the exercise of the sovereignty in the region under dispute, to which the esteemed cablegram transmitted to Your Excellency alludes; effective because it has its origin in the will of the two nations interested therein and because it concerns a matter exclusively of their own, and perfect because aside from what has been said it has been confirmed by the action of their governments.

#### *Fourth and Fifth Points.*

That which I have just stated, correcting the statements concerning the extent and scope of the jurisdictional sovereignty of Costa Rica in its southern region, leaves no doubt whatsoever as to the value and legal truth of the following conclusions: the first is that there exists a present boundary which divides the territory of Costa Rica from the territory of Panama, for all the effects of the internal law of both countries, and from the point of view of the international relations between the two republics, and with the other nations of the world, a boundary established by the only parties whom it affects and who could fix it, respected by them in the course of the years, sanctioned by direct acts of their governments, and on the efficiency of which for the same reason no discussion is admissible. The second is that the provisional character of the said line of demarcation does not operate in any way against the exercise of the sovereignty of my nation as far as the very bank of the Sixola and the Yurquin, since the only thing that this quality implies is the possibility of a modification in the frontier by virtue of a treaty, but not a limitation of the actual territorial ownership as long as in the absence of that agreement the *statu quo* lasts, as is declared by Panama. Such sovereignty and dominion of Costa Rica in the said region would be wholly a nominal and absurd thing if they were not accompanied with the power of defending the territory involved, of legislating on occupancy, possession and appropriation of the lands which it comprises, on the commercial traffic, on the order and security of the citizens, and other interests of civil life, and at the same time with the power of dispensing justice through the courts in

controversies relative to the property and possession of lands and in all kinds of transgressions of the national laws.

Therefore my Government has viewed with the greatest surprise the opinion expressed in said cablegram on this matter, and which limits itself to asserting that the courts of Costa Rica have no jurisdiction in the lands of Gandoca and the Sixola River; that is, that my nation has no sovereign power there. If it is asserted that its judges cannot pass any judgments nor order the carrying into effect of anything with regard to the things that occur in that integral part of its present territory, the predominance of its laws and the power of its authorities would be absolutely and unreservedly repudiated, because it cannot be understood what would be the object of one or the other without the power of deciding with certainty, that is, efficiently, the corresponding controversies, so that the axiom that the courts are the law brought into effect and life, would be rendered futile; whereby without remedy the inadmissible result would be reached that that region is outside of all jurisdictional power, in view of the fact that Panama without hesitation attributes it to Costa Rica, and that the Honorable Secretary of State is of the opinion that neither nation possesses it.

I am inclined to believe that because of the brevity of the text of the cablegram, this office has made some mistake in interpreting it, because my government considers it as an impossible thing that the government of Your Excellency, which is so eminently possessed of the qualities of wisdom, nobility and spirit of justice should have the intention of failing to recognize the sovereignty of my country over a part of the territory which it has governed and is governing without restrictions and in agreement with the Republic of Panama, which not only assents to the exercise of our sovereignty, but considers it undeniable, and has so evidenced in its acts of administration, as has been expressed above, adding on its part the very important supporting opinion that by virtue of the *statu quo* it exercises the same power in the lands which the arbitration decision of the President of France attributes to Costa Rica on the side of the Pacific and to the south of the Golfito river.

To sum up: Mr. Minister, I have the honor of informing you in order that Your Excellency may deign to transmit it to your esteemed government, that the territory of Gandoca and the Sixola River, from the very bank of this river, and of the Yurquin have been and are now subject to the sovereignty of Costa Rica; that Mr. H. L. McConnell has attempted without title in virtue of his own will alone, by means of an occupancy which our laws and universal right qualify as the act of an usurper to appropriate as lord and master a great area of that region; that the same gentleman imported merchandise clandestinely by the unopened port of

Gandoca, for which purpose he chartered ships which he caused to arrive at that point; that my government in the exercise of the national sovereignty, and under the necessity of inculcating respect for its laws acted through the fiscal authorities to proceed against that unlawful action and smuggling, and notified Mr. McConnell that he could not possess or make use of the lands mentioned since he had not acquired them in accordance with our laws; and that in the course of time said claimant addressed to this office a memorial in which he solicited important concessions of land in those places, a memorial which my government, to manifest its friendship for the government of the United States and in consideration of the esteemed recommendations of Your Excellency, considered with good will, giving as result thereof the reply addressed by this office to the said gentleman on the 12th of April, 1905, in which it proposed to him the leasing of said lands, up to the amount of two thousand hectares for the term of twenty-five to thirty years, subject only to the restriction of the rights acquired therein and to the reservations indispensable in the case. Said proposition was not accepted by McConnell, who after replying with a new plan of settlement unacceptable in almost all its parts, and which gave rise to a series of interviews at this office, finally agreed to the greater part of the clauses of a *modus vivendi*, which was communicated to Your Excellency, and in which lie reached the realization of his wishes and in which my government had the satisfaction of attaining the possibility of giving to that of Your Excellency a proof of its friendship, favoring, in spite of what had preceded in the case, the interests of an American citizen; Mr. McConnell, however, just at the moment when the negotiations were on the point of coming to a conclusion, and only an agreement in matters of detail was necessary, informed me of his decision to abandon all discussion, leaving matters as they were in the beginning, in the irregular condition to which I have already referred.

It is necessary therefore in justice to recognize that my Government, aside from not having committed any act contrary to what is prescribed by its laws and the rules of international law affecting private rights, lent itself to making a concession to the claimant, in which the desire is evident to act in a manner agreeable to the government of Your Excellency, although protecting, as is but proper, the rights of the nation so far as its sovereignty and the respect for its fiscal regulations are concerned; and I hope that by means of this note and the other data connected with it, which I request Your Excellency kindly to communicate to the Honorable Secretary of State at Washington, I shall succeed in convincing the illustrious and upright judgment of the Government of the United States of the fact that mine has acted in the matter in perfect

harmony with its powers as sovereign and without disregarding any right of the said company, or of Mr. McConnell, treating the latter, on the contrary, with particular generosity.

It is my duty to send Your Excellency new copies\* of the memorial of Mr. McConnell and of the reply of this office, bearing the date of the month of April of last year, and I also beg to offer you anew the homage of my respect and distinguished consideration.

JOSÉ ASTUA AGUILAR.

To His EXCELLENCE, MR. WILLIAM LAWRENCE MERRY,  
Minister Plenipotentiary of the United States,  
City.

AMERICAN LEGATION, SAN JOSÉ, COSTA RICA,  
March 20th, 1906.

To His EXCELLENCE SEÑOR DON JOSÉ ASTUA AGUILAR,  
Minister of Foreign Relations, etc.,  
Republic of Costa Rica, San José:

*Esteemed Sir*,—I have the honor to forward herewith copy in code translation of cablegram received to-day from the Honorable Secretary of State at Washington sent me after reading Your Excellency's despatch of the 3rd inst., which I forwarded on the 8th inst. with translation. The wording of the cablegram is so definite that I can add little thereto of value as an argument. Mr. McConnell claims to have a *prior title* to the lands in dispute from the Colombian Government. Consequently, it seems to me a logical necessity that Your Excellency shall successfully disprove said Colombian title in order to make your argument good.

The fact stated by the Honorable Secretary of State that, either by the Loubet Award or by the Guardia-Pacheco Treaty of Limits, said lands are to be placed under the exclusive sovereignty and jurisdiction of the Panama Republic, has much weight in the argument against the claim of exclusive jurisdiction at this time, as claimed by Your Excellency.

With assurances of my most distinguished consideration, I beg to subscribe myself

Your Excellency's most obedient servant,

WILLIAM LAWRENCE MERRY,  
E. E. and M. P. U.S.A.

\* No new copies thus far received. (Mr. Merry's note.)

[COPY.]

SAN JOSÉ, COSTA RICA, March 20, '06.

Code Translation Cablegram received this day from the Honorable Secretary of State, Washington:—

"It appears on an examination of the pending treaty that, if that treaty is ratified, the warehouses and rights of the proposed piers of American citizens will be within the territory of Panama. Company claims title by what they allege to be a valid location *under the laws of Colombia* before the separation from Panama. We should deem it a violation of the rights of the American citizens, possessors of this property, to interfere with their possession and enjoyment except upon the judgment of a court. We must insist that the officers of Costa Rica have no more right to do this than would the officers of Panama."

G.

No. 37.

DEPARTMENT OF STATE,  
WASHINGTON, April 16, 1906.

(*This same communication was sent to Minister Merry.*)

CHARLES E. MAGOON, Esquire, etc., etc., etc.,  
Panama.

Sir,—The Department has again taken up the complaint of H. L. McConnell and the American Banana Company against the Government of Costa Rica, and given it most careful attention. As a result of such consideration, the following telegram was sent you on March 19 last:—

"It appears on an examination of the pending treaty that, if that treaty is ratified, the warehouses and sites of the proposed piers of American citizens will be within the territory of Panama. The companies claim title by what they allege to be a valid location under the laws of Colombia before the separation of Panama. We should deem it a violation of the rights of the American possessors of this property to interfere with their possession and enjoyment except upon the judgment of a court, and we must insist that the officers of Costa Rica have no more right to do this than would the officers of Panama."

While some of the details of the case are involved in controversy, the Department would invite your attention to three considerations which appear to be beyond dispute, and which, in the present aspect of the

situation, the Department regards as of fundamental, if not of controlling, importance.

The first of these is that under the Loubet decision of 1900, accepted as final by both Colombia and Costa Rica, the territory included in the McConnell plantation was awarded to Colombia (now Panama), and became subject to the jurisdiction of that country. The second is that Mr. McConnell in 1903 entered upon a portion of these lands, planted a large area with banana-trees, built houses, and started the construction of a tramway, expending large sums of money in his enterprises, and he alleges that his proceedings were based upon the authority of certain laws of Colombia relating to uncultivated lands. The third consideration is that the pending treaty of March 7, 1905, between Costa Rica and Panama, defining the boundary line between those Republics, will, when drawn, include the McConnell concession within the jurisdiction of Panama.

The Department is not unmindful of the contention of Costa Rica that an understanding has existed between that State and Panama whereby the former has retained temporary possession and administrative control over the district, and pending the ratification of the treaty of March 7, 1905, exercises police powers and other general attributes of *de facto* sovereignty within the territory. At the same time it is undeniable that the *de jure* sovereignty has been in Colombia and Panama since the Loubet award, accepted as it is by Panama and Costa Rica, so that either by virtue of that award or of the pending boundary treaty the territory will ultimately come under the jurisdiction of Panama. Meanwhile certain American citizens, acting upon the assurances of the authorities of Colombia and Panama, and in accordance with the laws of those States, have gone into this territory, expended large sums in developing it, and by virtue of such acts have acquired certain possessory rights thereunder and are entitled to protection therein. In the adjustment of any conflicting claims of title which may arise or have arisen it would be improper for this Department to interfere. But, on the other hand, after rights, possessory or otherwise in this property have been acquired in good faith by American citizens and have become vested in them, the Department is of opinion that they should not be divested except by due process of law, by ejectment or other appropriate legal action.

In the Department's conception of this matter, Costa Rica exercises at present a temporary *de facto* sovereignty over the territory included in the McConnell concession, subject of *right* to be divested at any time at the will of Panama but actually continuing until such time as the pending

boundary treaty is ratified. She exercises the powers of government that are necessary for the orderly administration of the district, but should not use this sovereignty in such a way as to impair the rights of the *de jure* sovereign of the territory. Her functions of government are limited by her tenure, which is of a temporary and precarious character. Her duty is to preserve the property, not to destroy it, and hand it over to her successor without the commission of any acts tending to impair the ultimate rights of the *de jure* owner. It is obvious, for instance, that it would have been an unwarranted exercise of sovereign power for Costa Rica to grant a concession to McConnell for the construction of his railroad beyond the termination of the *de facto* sovereignty of Costa Rica. In a word, Costa Rica stands in the position of a usufructuary entitled to the fruits and profits of the territory during the period of tenure, and it cannot be admitted that Costa Rica can in any way destroy or impair the substance of the usufruct. In like manner it is equally clear that the title to property rights in this territory acquired since the Loubet award are determinable according to the laws of Colombia and Panama, and it follows that Costa Rica can rightfully exercise no jurisdiction within the territory which Panama could not exercise; and as Panama cannot rightfully deprive possessors of title properly acquired under Colombian laws which remained in force after the secession of Panama, without due process of law, it would be equally unjust for Costa Rica to attempt to do the same thing.

In considering the present connection of Panama with the territory in question, it would appear that that State has consented that Costa Rica continue as the *de facto* sovereign until the ratification of the treaty. If Panama should interfere and seek to exercise at present jurisdiction North of the Sixola River, this would be inconsistent with her recognition of Costa Rica's temporary sovereignty in that district. In the view of the Department, as long as the latter government is the sovereign in possession, whatever attributes that accompany or attend possession should be conceded to her, including the right to control by taxation or otherwise importations, etc., at Gadocan. But the ultimate attributes of sovereignty belong to the ultimate owner, and for this reason it is proper that Panama should see to it that rights and titles which have accrued concerning lands within this area should not be prejudiced by the State having accidental and temporary jurisdiction. It is suggested that this result may be reached by discreet representations by Panama to Costa Rica, perhaps by remonstrance or otherwise, rather than by a physical attempt to assert such jurisdiction.

You are instructed to call the situation as above set forth, together with the views of the Department, to the attention of the Government to which you are accredited, and to say that this Government insists that the property of Mr. McConnell and those whom he represents be protected and preserved, without any destruction thereof, until such time as the ultimate rights of the parties may be passed upon by a court or courts of competent jurisdiction.

In this connection, however, it is proper to state that the Department disclaims any intention to interfere in this case to the prejudice of the rights of the United Fruit Company, or any other American interest already acquired in the territory immediately in question.

I am, Sir,

Your obedient servant,

ELIHU ROOT.

NOTE.—Same instruction, *mutatis mutandis*, sent to Merry, Costa Rica.

PANAMA,

Received April 27th, 1906.

SECRETARY OF STATE, Washington:

In conference with the President Guardia and Obaldia concerning cable concession, reference to jurisdiction over territory north Sixaola River was made. Guardia said Panama conceded to Costa Rica the right to exercise complete jurisdiction, and Panama has no intention to withdraw said right until final action upon pending boundary treaty. He admitted that Panama had collected tariff duty on railroad material brought by American Banana Company from the United States to Gadocon, thence to Bocas del Toro, but denied that they had collected or attempted to collect duty on any or any part cargo not landed at Bocas del Toro....

MAGOON.

PANAMA.

Received May 2, 1906.

SECRETARY OF STATE, Washington:

Held conference with the President and Secretary of State for Foreign Affairs concerning matters affecting American interests in the territory Sixaola. Secretary of State for Foreign Affairs declares that Costa Rica has absolute jurisdiction in this territory. Declares further that matters in dispute are subject for courts to pass upon after jurisdiction reverts

to Panama upon ratification of boundary treaty. Declares that Panama cannot interfere or suggest any course of action to Costa Rica in these matters any more than she could permit Costa Rica to suggest proper course in disputed territory upon Panama jurisdiction on Pacific coast. Have forwarded to you report on conference to-day.

MAGOON.

AMERICAN LEGATION, SAN JOSÉ, COSTA RICA,  
April 27th, 1906.

To HIS EXCELLENCY SEÑOR DON JOSÉ ASTUA AGUILAR,  
Minister of Foreign Relations, etc., etc.,  
Republic of Costa Rica, San José:

*Esteemed Sir.*—Referring to this Legation's Despatch No. 269 of March 20, 1906, I beg to say that the Department of State at Washington has again taken up the complaint of H. L. McConnell and the American Banana Company against the Government of Costa Rica, and, after giving it most careful attention, instructs me in a despatch No. 694, dated April 16, 1906, to again most respectfully submit its views and conclusions to Your Excellency's honorable consideration.

While some of the details of the case are involved in controversy, my Government would invite Your Excellency's attention to three considerations which appear to be beyond dispute, and which in the present aspect of the situation my Government regards as of fundamental, if not of controlling, importance.

The first of these is that under the Loubet decision of 1900, accepted as final by both Colombia and Costa Rica, the territory included in the McConnell plantation was awarded to Colombia (now Panama), and became subject to the jurisdiction of that country. The second is that McConnell in 1903 entered upon a portion of these lands, planted a large area with banana-trees, built houses, and started the construction of a tramway, expending large sums of money in his enterprise, and he alleges that his proceedings were based upon the authority of certain laws of Colombia relating to uncultivated lands. The third consideration is that the pending treaty of March 7, 1905, between Costa Rica and Panama, defining the boundary line between those Republics, will, when drawn, include the McConnell concession within the jurisdiction of Panama.

My Government is not unmindful of the contention of Costa Rica that an understanding has existed between Your Excellency's Government and that of Panama, whereby the Government of Costa Rica has retained pos-

session and administrative control over the district, and pending the ratification of the treaty of March 7, 1905, exercises police powers and other general attributes of *de facto* sovereignty within the territory. At the same time it is undeniable that the *de jure* sovereignty has been in Colombia and Panama since the Loubet award, accepted as it is by Panama and Costa Rica, so that either by virtue of that award or of the pending boundary treaty the territory will ultimately come under the jurisdiction of Panama. Meanwhile certain American citizens, acting upon the assurances of the authorities of Colombia and Panama and in accordance with the laws of those States, have gone into this territory, expended large sums in developing it, and by virtue of such acts have acquired certain possessory rights thereunder, and are entitled to protection therein. In the adjustment of any conflicting claims of title which may arise or have arisen my Government does not pretend to interfere. But, on the other hand, after rights possessory or otherwise in this property have been acquired in good faith by American citizens, and have become vested in them, the State Department at Washington is of opinion that they should not be divested except by due process of law, by ejectment or other appropriate legal action.

In my Government's conception of this matter, Costa Rica exercises at present a temporary *de facto* sovereignty over the territory included in the McConnell concession, subject of *right* to be vested at any time at the will of Panama, but actually continuing until such time as the pending boundary treaty is ratified. She exercises the powers of Government that are necessary for the orderly administration of the district, but should not use this sovereignty in such a way as to impair the rights of the *de jure* sovereign of the territory. Her functions of government are limited by her tenure, which is of a temporary and precarious character. Her duty is to preserve the property, not to destroy it, and hand it over to her successor without the commission of any acts tending to impair the ultimate rights of the *de jure* owner. It is obvious, for instance, that it would have been an unwarranted exercise of sovereign power for Costa Rica to grant a concession to McConnell for the construction of his railroad beyond the termination of the *de facto* sovereignty of Costa Rica. In a word, Your Excellency's Government stands in the position of a usufructuary entitled to the fruits and profits of the territory during the period of tenure, and it cannot be admitted that Costa Rica can in any way destroy or impair the substance of the usufruct. In like manner it is equally clear that the title to property rights in this territory acquired since the Loubet award

are determinable according to the laws of Colombia and Panama, and it follows that Costa Rica can rightfully exercise no jurisdiction within the territory which Panama could not exercise; and as Panama cannot rightfully deprive possessors of title properly acquired under Colombian laws, which remained in force after the secession of Panama, without due process of law, it would be equally unjust for Costa Rica to attempt to do the same thing.

In considering the present connection of Panama with the territory in question, it would appear that that State has consented that Your Excellency's Government continue as the *de facto* sovereign until the ratification of the treaty. In the view of my Government, as long as the Government of Costa Rica is the sovereign in possession, whatever attributes that accompany or attend possession should be conceded to her, including the right to control, by taxation or otherwise, importations, etc., at Gadokin. But the ultimate attributes belong to the ultimate owner, and rights and titles which have accrued concerning the lands within this area should not be prejudiced by the State having accidental and temporary jurisdiction.

My Government insists that the property of Mr. McConnell and those whom he represents be protected and preserved, without any destruction thereof, until such time as the ultimate rights of the parties may be passed upon by a court or courts of competent jurisdiction.

The Department of State at Washington disclaims any intention to interfere in this case to the prejudice of the rights of the United Fruit Company or any other American interest already acquired in the territory immediately in question.

With assurances of my most distinguished consideration,

I beg to remain Your Excellency's

Most obedient servant,

JAMES G. BAILEY,  
*Chargé d'Affaires ad interim.*

No. 1164.

AMERICAN LEGATION TO COSTA RICA, NICARAGUA, AND SALVADOR,  
SAN JOSE, COSTA RICA, June 6, 1906.

To THE HONORABLE ROBERT BACON,

Acting Secretary of State, Washington, D.C.:

*Sir*,—Referring to Department's No. 694, dated April 16th last, regarding the complaint of H. L. McConnell and the American Banana Company

against the Government of Costa Rica, I have the honor to transmit here-with (Enclosure No. 1) copy and translation of this Government's reply thereto, from which it will be seen that it adheres to its former position in the matter.

The translation is a very poor one, but, as the mail closes to-day, an effort to have a new one made would probably delay its arrival at the Department too long, as the mail might not leave again for a week.

Mr. H. B. Mendenhall, of Mobile, Secretary of the American Banana Company, arrived here May 18th, holding the company's Power of Attorney, with the view of reaching some satisfactory terms of agreement, if possible, with the Costa-Rican Government.

On May 21st I accompanied him to the foreign office here, introducing him to the Minister for Foreign Affairs (Mr. Luis Anderson), since which they have had a number of interviews in which Mr. Mendenhall has been informed that the Government cannot enter into any terms of agreement with his company affecting the present *status* of the property, for the reason that the lands in question, by virtue of denouncement according to and under the laws of Costa Rica, belong to the United Fruit Company, an American corporation, and is, therefore, entitled to the protection of the Costa-Rican Government.

The Foreign Minister has, however, expressed a willingness to enter into any new contract or agreement with the American Banana Company that does not in any way compromise or involve the territory in controversy between said Company, the United Fruit Company, and the Costa-Rican Government.

With assurances of my highest consideration, I have the honor to remain,  
Sir,

Your most obedient servant,

JAMES G. BAILEY,  
*Chargé d'Affaires ad interim.*

ENCLOSURES.

[TRANSLATION.]

OFFICE OF THE SECRETARY OF FOREIGN RELATIONS,  
SAN JOSE, May 26th, 1906.

TO THE HONORABLE THE CHARGÉ D'AFFAIRES OF THE U. S., City:

*Distinguished Sir*,—I have before me your esteemed communication addressed by you to my predecessor in this office, Don José Astua Aguilar, on the 27th of April last.

The unavoidable duties of this office, owing to the reorganization of the personnel of this office, and also to the necessity of informing myself carefully of all the details of the matter to which your memorandum refers, have, much to my regret, delayed until now the present reply.

In said communication number 270 you explain that the State Department at Washington has again taken into consideration the claim of Mr. H. L. McConnell and of the American Banana Company against the Government of Costa Rica, and that, after careful study thereof, has seen fit to communicate to you instructions whereby you are to submit to my Government three points of the question, which in the valued opinion of the State Department possess paramount importance and decisive influence in the matter.

The first observation submitted by the Department at Washington through your esteemed intervention, and from which it is deduced that the Government of Costa Rica does not possess any legal ground to proceed as it has done against the infringements and usurpations committed by Mr. McConnell, is that "according to the decision rendered by His Excellency the President of the French Republic, accepted as final both by Costa Rica and Colombia the land in which are located the plantation and other works of McConnell, which have caused this controversy, was adjudicated to Colombia, now Panama, and is subject to the jurisdiction of that country."

Permit me most respectfully to call your esteemed attention to the main import of this assertion: Costa Rica has *not* accepted as yet, as a final decision of its controversy on the boundaries with the Republic of Colombia, the award of His Excellency Mr. Loubet. Far from that,—as soon as my Government obtained knowledge of this most important act, it declared on the 29th of September, 1900, to the arbitrator, through its legation at Paris, that Costa Rica interpreted the first section of the executory part of the award in the terms expressed in the said declaration. Through His Excellency the Secretary of Foreign Relations, Mr. Delcassé, the arbitrator deigned to reply to the representation submitted by Costa Rica, in terms of thorough understanding, and urged both parties that they, obedient to the spirit of conciliation and good understanding which had prevailed until then, should endeavor to settle the matter, since the arbitrator had only been able to fix the frontier by general indications. Subsequently, in a communication addressed by this Department to the Secretary of Foreign Relations of Colombia, dated the 27th of July, 1901, my Government made known to that at Bogota the attitude taken

by Costa Rica concerning this important matter, declaring that "any interpretation different from that given by Costa Rica and which, by impairing its undisputed rights, would go beyond the claims of Colombia under litigation, would vitiate the force of the arbitration decision."

The statement submitted to the arbitrator and the said communication, the text of which you will find in full in the document which I have the honor of including herewith, which after all are nothing else but the expression of the non-conformity of Costa Rica concerning certain details closely related to the judgment, whose scope and efficiency they might affect, show with entire clearness that the award has been far from being accepted unconditionally as final settlement of the controversy on the frontiers.

We are, therefore, in the position that, after the communication of the 27th of July which specified the attitude of Costa Rica in so far as the arbitral award is involved, the situation between Costa Rica and Colombia is one of mere expectation, nothing whatever having been done which could be construed as acceptance of or submission to the award rendered. This matter was *not* again dealt with specially between the countries interested until the celebration of the treaties at Panama, one of which had for its very object the stipulation of submission to the decision, on the part of the parties interested.

It is only proper to note here that, as communicated in due season to His Excellency James Barrett, Minister Plenipotentiary of the United States to the Republic of Panama, by the plenipotentiaries who concluded said treaties, there is an intimate relation between the said treaties, both because of the date on which they were signed, which itself constitutes the unity of the act, and because of the considerations which underlie all of them, and from these considerations taken together, is to be inferred the purpose of the contracting parties to make the three instruments into interdependent acts having for object one and the same end. From this must be deduced that, although the first of said treaties has for object the recognition of the award of the arbitrator, it is only on the condition *sine qua non* that the stipulations contained in the other two treaties be complied with.

Moreover, it must be borne in mind that up to the present moment the said treaties do not possess any legal force whatever, since they are awaiting as yet the legislative approval which, as a fundamental necessity for both Republics, international treaties require to become valid (article 65, section 4, Constitution of Panama; article 73, section 4, Constitution

of Costa Rica), and as long as that approval and the exchange stipulated are *not* effected, the acceptance of the boundary award is *not* a definitely settled matter, and consequently it cannot be claimed that the arbitral award establishes a right in favor of Panama over the land arbitrarily occupied by Mr. McConnell.

The situation, therefore, of the land which is the subject-matter of the claim, so far as it involves jurisdiction, was and is the one which is fixed by the *status quo* established in the treaty of the 15th of March, 1825, ratified by the convention of the 25th of December, 1880, the scope of which has been the object of various controversies. But, even if we were only to consider the position of *Colombia* to decide this, we may quote the text of the note addressed by the office at Bogota to us here, on the 16th of March, 1891, which reads as follows:—

“As the Republic [of Colombia] is, therefore, guided by special feelings of conciliation, it suggests that the provisional frontier be the *Doraces River* from its flow into the Atlantic Ocean up to its sources, then the range of *Las Cordilleras* as far as the *Golfito River*, and then the *Golfito River* down to its flow into the *Golfo Dulce*. ”

• • • • •

In the second place, the State Department expresses the opinion that Mr. McConnell, as alleged by him, occupied the land on which the claim bears, under the protection of certain laws of Colombia dealing with uncultivated land.

As regards this point, we must call respectfully your attention to the fact that, whatever may have been the laws of Colombia relating to unappropriated lands, the zone of land not possessed by that Republic was, under general principles of law and pursuant to a positive agreement of both governments clearly expressed in the treaties and communications referred to, excluded from the jurisdiction of that Republic. It is certain that Mr. McConnell has planted banana plants on a tract of land, and that he has made there other important improvements; but it is also certain that, as has been pointed out to your office by my predecessor in his note of the 3rd of March last, such acts were performed clandestinely and illegally, being therefore subject to the limitations usual in such a case, and to proper legal sanction.

But, inasmuch as the improvements made by Mr. McConnell or any other person on some land may give him possible rights of a civil character, it is admissible that complainant would, perhaps, have a right to claim proper

indemnity from him who, becoming the owner of said land, may avail himself of his efforts, of his capital or of what they represent,—in no manner, however, would they serve him as a basis for any claim not in accordance with the laws of this country. At this moment the land in question has by virtue of a denunciation become the property of a private person; *id est*, a company incorporated in compliance with the laws of the United States, composed essentially of American citizens and possessing legal personality in Costa Rica. The acquisition has been effected in a legal manner, in conformity with our institutions and under the protection thereof. With this new owner, in my judgment, Mr. McConnell should seek to settle his rights, if any he have, before the courts. Incidentally, I assure you that the courts of Costa Rica have at all times rendered justice in a perfectly satisfactory manner, and accordingly none of their decisions has ever failed to fulfil the responsibility of the country in the eyes of foreign nations.

• • • • •

In the third place, the following suggestion occurs in your communication: Pending the treaty of the 7th of March, 1905, concluded between Costa Rica and Panama, which defines the boundary line between these two Republics, when that line be materially fixed, it will include the concession of McConnell within the jurisdiction of Panama.

Thence your government derives that, until the ratification of the March treaty, Costa Rica only exercises the right of police power and other attributes of sovereignty *de facto* within the territory in question, and it deems as undeniable that the sovereignty *de jure* has been vested in Colombia and now in Panama.

Concerning this point I must state what has been the judgment of Costa Rica during the whole period elapsed since the boundary question started, so that you can see most plainly therefrom the sincerity and uprightness of its proceedings in the present case and the inflexible logic and consistency which inspire its conduct in the present matter.

My government is of the opinion that the difference between sovereignty *de jure* and sovereignty *de facto* is not involved in the present instance, and cannot be relied upon to support the proposition which your important communication maintains. It thinks that such a difference exists, but that the same is not based upon the diversity of the attributes which make up one or the other, but on their origin, their cause, the title by virtue of which they are exercised. Both kinds of sovereignty give the right

to exercise the same and identical powers for the performance of the acts which sovereignty in general comprises. They only differ in that one is made effective by an incontestable right, with undoubted title, while the other is the result of a fact which is accomplished by sufficient elements to make itself respected by virtue of an actual occupation, and capable in itself of answering before the nations for the acts it consummates. The conqueror who pursuant to his own ambition makes himself the master of a country, and subjects it to his authority, governing it according to its necessities and tendencies, and even the rebel, the successful rebel, who succeeds in uniting sufficient elements to cause his government to be respected and to maintain order, exercises without doubt a sovereignty *de facto*, but, as far as the nature and scope of its powers are concerned, it differs in nothing from the sovereignty *de jure*; but Costa Rica and Panama who exercise in the zone under dispute a sovereignty *animo domini*, by virtue of a legitimate title such as is the Arbitration Agreement, cannot be said to possess the simple sovereignty *de facto*, and, even if this be so, we have seen that in its character and scope it is not less efficient than that *de jure*.

Our right, therefore, to govern and dispose as sovereigns of the land that we are possessors of, as long as the boundary question is in abeyance, is, therefore, a point which is not doubted either by Colombia formerly or by Panama at the present moment. And the complete sovereignty of both countries over that which each of them is occupying now up to the time of the final demarcation comprises without limit—both governments have understood it thus—all the attributes making up sovereignty.

The titles, by virtue of which both governments govern their possession of those regions are the *Treaty* and the *Convention (Agreement)* to which I referred before (15th of March, 1825, and 25th of December, 1880). In the former treaty it is specified that both countries pledge themselves formally to respect their boundaries *as they are at the present time*, reserving for themselves to effect amicably, by means of a special convention, the demarcation of the dividing lines for both, and the convention adds that, until the question of boundaries and the designation of the frontiers shall be settled, the *status quo* agreed will be preserved. What was then implicitly agreed at that time—and what was that which has been accepted thereafter? Simply that both Republics should manage and govern as their property that which they were and are possessing, without either one of them ever having claimed that they were to have only the usufruct of civil right during the period of uncertainty.

From what has been expounded, it clearly follows that Colombia formerly and Panama since then have understood and understand, *with* Costa Rica, that each of them is owner *in absolutum* of that which they possess, and that to such an extent that their passing disputes merely touched on the question as to whether this place or that one was or was *not* occupied by one or the other nation.

On the other hand, the undersigned is of the opinion that the principles which define and regulate private property are not at all applicable to the national sovereignty, if one desire to deduce therefrom that he who is not a definite sovereign cannot alienate! The property from the point of view of International Public Right, or, in other words, the eminent domain of the sovereign, consists, as you are well aware, in the faculty of keeping at all times subject to the authority of the laws a portion of a land, with ample and complete power to decree expropriations and to convey, by sale or in virtue of any other title, the estates comprised within the public domain, the further power to impose taxes, and, in short, to execute all and any of the acts which sovereignty comprises. Such a property right (the eminent domain) is not to be transferred. No act of Costa Rica which would put any part of the land under dispute outside of the reach of the laws of Panama, when this Republic, by virtue of the decision of Loubet or of the pending treaties, should incorporate in its territory all or a part of that which Costa Rica possesses at the present moment, would, for the reasons indicated by the State Department, be regular or valid; but adjudications of land which to-day is governed by our laws and to-morrow may, without any trouble, be governed by the laws of Panama, constitute *acts* which, while they affect in matters civil the right of property, do *not* affect in International right, where the right, which is sovereignty itself, possesses a significance of a broader, more absolute and more important character, and it is not possible that such acts be denied to him who possesses, governs, and administers a part of a land.

The alienation of land to private parties which in Civil Law constitutes a transfer of private title is in International Law, where the ownership (*dominium*) as stated possesses another scope, simply an act of administration and usufruct; and I assume that it is in this sense that the State Department at Washington considers Costa Rica as an usufructuary of the land under controversy with Panama. The only method there can be of enjoying the usufruct of this territory is that of allowing the land, by sale or donation or some other means to come within the reach of private activity, and of demanding taxes, and of enforcing obedience to the

laws, all these being acts which maintain *sine lesione* the eminent domain, the right of enforcing at any time and in any form the authority of the legitimate owner. If the *substance* is saved, as the Romanists say, the *actus* is one of pure *usufruct*. If the question were that of ceding to a foreign country a part of the territory which to-morrow can belong to Panama or Costa Rica, if such part were recognized as or declared an independent State, *then*, indeed, the sovereignty would be infringed, then there would have been committed an invasion of the eminent domain of that Republic, and the act would be irregular and void. As long as that is not done, the act remains regular and valid.

These considerations I beg you to transmit to the Honorable Secretary of State at Washington, and the same induce me to confirm the communications made by my predecessor. I confidently hope that therewith, and under the protection of the just spirit of the Government of the United States, I shall succeed in convincing the State Department of the rectitude and the spirit of equity that have guided my government in the present matter.

I profit by the opportunity to reiterate to yourself the assurances of my great esteem, with which I remain your obedient servant,

LUIS ANDERSON.

MEMORANDUM on behalf of the Northern Railway Co. upon the Memorial of Herbert L. McConnell, filed on behalf of himself and other persons composing the American Banana Co. on the 22nd December, 1904, and the Memorial of the American Banana Co. dated on the 28th July, 1905, and the Brief filed in support of the last-mentioned Memorial.

The Northern Railway Co. is a corporation formed by citizens of the United States under the laws of New Jersey, and is entitled by transfer to certain rights which were acquired by Astua Aguilar under the laws of Costa Rica by proceedings commenced on the 1st March, 1900, in the lands claimed by the said Herbert L. McConnell or the American Banana Co. and lying north of the Sixaola River.

In the instructions contained in the telegram of the State Department of the 28th January, 1906, to the American Legation at San José, Costa Rica, it is intimated that, while the power of Costa Rica and Panama to make a provisional agreement respecting the administration of the disputed territory pending the definite settlement of its ownership is not controverted, the Department does not concede the power of the provisional administrator to execute judgments in the capacity of sovereign until the sovereignty of the territory is adjudicated and the courts of the sovereign have passed upon the matters involved, or to prejudice the ultimate rights of American citizens therein by adverse action in advance of such definite adjudication.

The language of this telegram has created an apprehension in Costa Rica that this government will not permit the authorities in Costa Rica to exercise the ordinary functions of government in any part of the disputed territory, although the Costa Rica government may have been in actual possession and control of it for many years, and is the *de facto* sovereign. The consequence is that the citizens of this country who constitute the Northern Railway Co. are very much embarrassed in asserting their title to their lands in the courts of Costa Rica against Herbert L. McConnell and the American Banana Co. who have intruded into the same without any right. It is submitted that it could not have been the intention of the Department to intimate that the government of the territory in dispute between Costa Rica and Panama and the rights

and titles of all persons in respect of the land comprised in it ought to be suspended until the dispute between the two countries should be finally adjusted. Accordingly, it is suggested on behalf of the Northern Railway Co. that the instructions contained in the telegram should be so modified as to express that the government of this country does not question the right or duty of the government of each of those countries to administer the law and to enforce in its courts the rights of all persons in such parts of the disputed territory as are *de facto* in the possession and control of such government, until the dispute shall be finally adjusted and the different parts of the disputed territory put into the possession and control of the countries to which they belong respectively according to the terms of the final adjustment.

The principles applicable to cases where the government of one country is actually in possession and control of territory that rightfully belongs to another country do not seem to admit of question.

When the British forces were in occupation of Castine, Me., in 1814-15, the sovereignty of the United States was regarded as suspended, and the inhabitants were bound only by such laws as the British government chose to recognize and impose. Accordingly, goods imported into that place during the occupation were not subject, even after the occupation ceased, to the duties imposed by the laws of the United States.

*U. S. v. Rice*, 4 Wheat. 246

The extent to which the authority of a *de facto* government is recognized is shown by the effect given to it in the case of the Confederate States in *Thorington v. Smith*, 8 Wall. 9-12, on the ground that it was the actual government of the country for the time, though not the lawful one.

In *Baldy v. Hunter*, 171 U. S. 400, 401, the principles were again examined; and it was broadly laid down, upon the same ground, that the protection of property in those states, the enforcement of contracts, the transfer and descent of property, and similar subjects were under control of the local governments and that the judicial and legislative acts in the several states ought to be respected.

In *Groover v. Coffee*, 19 Florida, 61, 80, a grant by the government of Georgia of land included in the area over which the authority of that state was actually exercised, was held to be valid and effectual, although, when the true boundary was ascertained and adjusted, the land was found to be in Florida. And in *Rhode Island v. Massachusetts*, 12 Pet. at p. 749, the Supreme Court laid down the principle, "That grants by a gov-

ernment *de facto* of parts of a disputed territory in its possession are valid against the state which had the right."

The doctrine announced in the cases of *Groover v. Coffee* and *Rhode Island v. Massachusetts* was modified and explained by drawing a distinction between cases where territory has been ceded or conquered and cases of disputed boundaries. The court explained the distinction in the following language (*Coffee v. Groover*, 123 U. S. pp. 9, 10):—

"It is no doubt the received doctrine, that in cases of ceded or conquered territory, the rights of private property in lands are respected. Grants made by the former government, being rightful when made, are not usually disturbed. Allegiance is transferred from one government to the other without any subversion of property. The doctrine has been laid down very broadly on several occasions by this court (p. 9). . . .

"But whilst this is the acknowledged rule in cases of ceded, and even conquered territory, with regard to titles acquired from a former sovereign who had undoubted right to create them, it does not apply (as we shall see) to cases of disputed boundary, in relation to titles created by a sovereign in possession, but not rightfully so. In the latter case, when the true boundary is ascertained, or adjusted by agreement, grants made by either sovereign beyond the limits of his rightful territory, whether he had possession, or not (unless confirmed by proper stipulations), fail for want of title in the grantor. This is the general rule. Circumstances may possibly exist which would make valid the grants of a government *de facto*; as for example, where they contravene no other rights" (p. 10).

In the present instance we cannot at this time state whether the territory in dispute is or is not to be regarded as ceded territory. But it is not necessary to determine that point, since there exist special circumstances, evidenced by the terms of treaties, and the official declarations, whereby the principles explained with regard to ceded territory are made applicable.

The arbitration treaty of 1880 was amended in 1886, for the express purpose, with others, of protecting titles of third parties. This amendment was made at the instance of Secretary Bayard in his despatch of 14th November, 1885, wherein he insisted upon the establishment of two principles, one being that "whatever rights the United States or other citizens may possess on either side of the boundary which may be established, shall not be affected by the award but shall pass with the soil and be respected by the new comer as though originating under his grant." The scope and effect of the amendment are shown by the following documents:—

In the communication from Secretary Bayard to the representatives of Costa Rica and Colombia under date of 26th May, 1886 (For. Rel., 1893, p. 280), he states as follows:—

“The third article of that supplementary convention reads as follows:—

“ARTICLE III. The judgment of arbitration is to be confined to the disputed territory within the extreme limits above described and cannot in any sense whatever affect the rights which a third party not taking part in the arbitration may allege to the ownership (*propiedad*) of the territory comprised within the limits described.”

“The Government of the United States accepts this formal declaration as a sufficient and concurrent response on the part of Colombia and Costa Rica, to the points presented in my identical note of November 14, 1885, understanding that the term ‘ownership’ (*propiedad*) is employed in no restrictive sense, but includes all possessory or usufructory rights and all easements and privileges which the United States or their citizens may possess in the disputed territory, not only as respects the relation of the U. S. toward each or either of the contracting parties to the Arbitration, but also with regard to the relationship of the United States or their citizens toward any third Government not actually a party to the submission.

“This declaration on the part of the U. S. is proper, in view of the fact, announced in your note to me of Nov. 10, 1885, and further declared and defined in Article II. of the Supplementary Articles of Jan. 20, 1886, that the region in dispute not only embraces territory to which the concessions of Colombia and Costa Rica and the mutual guarantees of the United States with Colombia might be found applicable, but also includes territory coming under the purview of the existing arrangements of Nicaragua with the United States and with citizens of the United States.”

In confirmation thereof Minister Rengifo of Colombia, by letter dated 22nd February, 1894 (Foreign Relations, 1894, p. 185), stated that “I will not close this note without declaring, in virtue of express authorization, that, if the decision of the arbitrator should adjudge to my Government control over the territories which it thinks belong to it, it would recognize the rights of private parties therein, and the transfers of actual ownership made by Costa Rica. Citizens of the United States or any other foreigners that have obtained concessions of unimproved lands, or who, for any other just cause, are the owners of lands, shall be maintained in possession thereof, since every valid title is to be respected.”

Accordingly, it is clear that, even if the states of Panama and Colom-

bia should adopt as a general international principle the doctrine laid down by the United States Supreme Court in the case of *Coffee v. Groover*, 123 U. S. 1, governing disputed boundaries, the terms of the treaty and the official assurances of the powers to the United States have clearly excepted the instance under consideration from the operation thereof.

As regards the territory in dispute, the government of each country has for many years been in possession and control of lands that were claimed by the government of the other. It is conceded in Herbert L. McConnell's Memorial and in the brief that, as far back as 1880, it was agreed between the two governments to maintain the *status quo* until the true boundary should be finally ascertained, and that the line of the Sixaola River was established as the boundary to which the occupation and temporary jurisdiction of Costa Rica extended. That *status quo* has been maintained ever since and still subsists. It was distinctly stated in the letter of Mr. Suarez of the 12th January, 1894, on behalf of the Colombian government (For. Rel., 1894, p. 184), that the river Sixaola was admitted by both governments to be the border line of the then possession of both countries and Mr. Rengifo's letter of the 22nd February, 1894, on behalf of the same government, recognized the same fact. The *status quo* is also referred to in the letter of Mr. Jimenez on behalf of Costa Rica of the 13th February, 1894, and that of Mr. Suarez on behalf of Colombia of the 18th May, 1894 (For. Rel., p. 190, 191).\*

The Arbitration Treaty of 1880 (amended 1886) having failed, a further treaty was made between the two states in 1896 by which the question of the boundary was referred to the arbitration of the President of the French Republic, who afterwards made his award at Rambouillet on the 11th September, 1900. No change in possession or control of any part of the disputed territory has yet taken place in pursuance of this award, and the *status quo* remains exactly as it was before the award. In fact the award is so expressed that it is impossible to ascertain from it where the line described in it ought to be laid down upon the ground, and negotiations have been going on between the two countries ever since for the purpose of determining the line. In the meanwhile the *status quo* has been continued, and the administration of the territory north of the Sixaola River has in fact been maintained by Costa Rica. Until the possession and control of this territory has been delivered up to Panama, the actual control of Costa Rica is likely to continue.

In the Memorial of Herbert L. McConnell of the 22nd December, 1904,

\* Extracts from these letters are found on pages .

an attempt is made to represent the present negotiations as relating to an exchange of territory rather than to the fixing of the boundary line. And in the brief, while it is not disputed that the two countries can set aside an award, yet it is contended that they cannot disturb vested rights. Whatever may be the nature of the present negotiations, the fact is that there has never been any change of possession or control in pursuance of the award, and until the change takes place the *de facto* sovereignty and jurisdiction remain as before. The line has never been actually laid down upon the ground, and cannot be so laid down without further arrangement between the two countries. In some places the position of the line might be indicated, and the two countries are undoubtedly arranging to vary its position in some places where its position admits of no doubt, in order to compromise their differences in places where it is impossible to follow the language of the award. But however the arrangement may be described or characterized, its purpose is to settle the position of the boundary, which will be determined for the first time when the arrangement is finally concluded. If the terms of the award had been perfectly clear and easy of application, it could not have been said that the *de facto* government of the territory in the possession and control of Costa Rica was transferred *ipso facto* at the moment when the President's award was made or communicated to the two countries. It was in any event necessary that something should be done to carry the award into effect before there would be any change in the actual control. As to the vested rights spoken of in the brief, it may be admitted that they cannot be disturbed, but no vested rights could be acquired except under the authority of the *de facto* government.

It appears on the face of the telegram of the 28th January, 1906, that the question of the true boundary is still unsettled. Nobody disputes that the *de facto* possession and control of the territory north of the Sixaola River is still maintained by the government of Costa Rica. If it were not so, there would be no color for the applications of McConnell and the American Banana Co. to this government. Their application in such a case would properly be made to the government and the courts of Panama to vindicate the rights they assert. Their reasons for not doing so are that the government of Panama has never pretended to assume control in this part of the country and the process of its courts does not run there. This shows that the *de facto* government is that of Costa Rica.

It may be observed that the original despatch of the 8th February, 1905 (p. 70), which was sent on account of the Memorial of Herbert

L. McConnell, related chiefly to the complaint of losses on account of goods sunk in a lighter, and it declined to pass on the other questions and made no suggestions regarding the powers or rights of the *de facto* government.

As regards the suit against Herbert L. McConnell for an injunction to restrain him from violating his agreement with A. W. Preston and others, which is referred to in the Memorial of the American Banana Co. (p. 178), it should be mentioned that an injunction as prayed was awarded by an order of the U. S. Circuit Court for the Southern District of Alabama made on the 31st August, 1905, and that, upon the appeal of the said Herbert L. McConnell, the order was affirmed by the U. S. Court of Appeals for the Fifth Circuit on the 30th October, 1905.

STOREY, THORNDIKE, PALMER & THAYER.

## CHAPTER 7.

Containing the transfers of the Astúa Denouncements, and the legal proceedings in Costa Rica through which the said denouncements were adjudicated and effected, and showing the participation of McConnell as a party to such proceedings.

### ORIGINAL TRANSFER OF THE ASTÚA DENOUNCEMENTS.

Protocol No. 7, Translation of deed covering the cessions of rights in Denouncements 425 and 427 of March 1st, 1900, of Eleven Thousand Hectares of land located on the Sixaola and Estrella Rivers.

Consideration, \$5,000.00.

Before me, Manuel Francisco Jimenez Ortiz, Notary Public of this city, appeared Messrs. Luis Anderson Morua, bachelor, lawyer, and Mariano Guardia Carazo, married, book-keeper, both of age and resident of this place, the first for himself and the second as the general representative of the United Fruit Company of Jersey City, and stated:—That attorney José Astúa Aguilar, for himself and in the name of his children (minors), José Antonio, Graciela, Dora, Mercedes and Margarita Astúa Lizano, his wife, Carolina Lizano Ulloa, and Rodolfo Rojas Montero, for himself and in the name of his daughters (minors) Lola, María, Adelia and Graciela Rojas Gonzalez, presented themselves under date of March 1st, 1900, before the judge authorized in the premises (Contencioso-Administrativo) denouncing for each one of the twelve persons indicated 500 Hectares of the Government land situated in the jurisdiction of the district of Limón and bounded as follows: North by the Maritime reservation or mile of the Atlantic, which commences at Gandoea Creek, continuing toward the mouth of the Sixaola River and extending in the direction toward Cahuita; south by the left bank of the said Sixaola river; east by the above-mentioned Maritime reservation, starting from the mouth of the Sixaola; West, in part by the same line of the Sixaola and the balance by Government lands, as is shown in the respective instrument on file with the Judge above mentioned and which carries the number 2904.

That the same persons as hereinbefore expressed presented themselves also before the same authority on the first day of March, 1900, denounce-

ing Five Hundred Hectares for each one of the twelve persons indicated, located in other Government land, situated in the jurisdiction of Limon, and bounded:—on the North in part by the Maritime Reservation or mile, which extends along the shore from Cahuita point to the mouth of the Estrella River, and in part by the same river; on the South by the Sixaola and the lands of San Bernardo Colony; on the East by lands denounced by the same parties herein mentioned; on the West by the Estrella River and Government lands as is shown in the respective instrument on file in the office of the Judge above mentioned and carried under No. 2905

Mr. Anderson continues stating that all of the rights which the parties mentioned herein have in the two denunciations specified have been ceded to him with the exception of those which belong to Margarita Astua Lizano (minor); and that, as a consequence, he is to-day denouncer of Eleven Thousand (11,000) Hectares of land, the rights in which have been ceded to him; and that, as cessionaire, he cedes in turn all of his rights, actions and privileges which he has or may have in the before-mentioned denunciations, as they now stand, in accordance with the instruments mentioned, to the United Fruit Company of Jersey City in the sum of Five Thousand (5,000) Colones which in this act and in my presence he receives in current money.

I, the Notary, certify that I am acquainted with the parties appearing before me, and that they enjoy full civil capacity; that I have seen the relative documents from which the deed herein set forth has been taken. I vouch for the personality of Mr. Guardia by virtue of the power of attorney executed before Alberto Pacheco Cabezas, Notary Public, in this city, at twelve o'clock noon of the thirty-first day of August of the past year. I adhere and cancel stamps in accordance with the law. I execute a first copy of this contract and deliver same to the Executor, Mr. Guardia. I collect no fees.

This writing having been read to the parties present before witnesses, with whom I am acquainted and know that they can act as such, Messrs. Ricardo Pacheco, lawyer, married, and Jorge Fonseca, bachelor, both of age, and residents of this place, they all stated that they approved of it, and all signed with me in the city of San José at 12 o'clock noon of the 9th day of August, 1904.

(Signed) MANUEL F. JIMENEZ.  
 MARO. GUARDIA. LUIS ANDERSON.  
 RICARDO PACHECO. J. JORGE FONSECA.

CERTIFICATE showing ACQUISITION OF ASTUA DENOUNCEMENTS by John M. Keith and others.

4th February, 1905.

ALEJANDRO JIMINEZ CARRILLO,]

Secretary of the Court of Contencioso Administrativo of the Republic of Costa Rica,

CERTIFIES: That in this Court there are in process of adjustment the documents relating to the denouncement of public lands denounced by Don José Astua Aguilar, Donna Carolina Lizano Ulloa de Astua, and Don Rudolfo Rojas Montero for themselves, and the first and last also in the name of their respective minor children, José Antonio, Graciela, Dora, Mercedes and Margarita Astua Lizano, legitimate children of the first names; and Lola, Maria, Adilia and Graciela Rojas Gonzalez, legitimate children of the third mentioned. Said denouncements were both presented to this Court the 1st of March, 1900. The first denouncement bears Number 2904, and the land therein denounced is situated in Talamanca, jurisdiction of the Territory of Limon within the following boundaries: North, the maritime mile fronting the Atlantic, commencing at Gondoca Creek toward the mouth of the Sixola River and extending in the direction of Cahuita; South, the left bank of said Sixola River; East, said maritime mile starting from the mouth of the Sixola River; West, in parts the same line of the Sixola, and for the remaining distance public lands. There have been denounced in this region 500 hectares for each one of the three persons: Astua Aguilar, Lizano Ulloa de Astua and Rojas Montero, and 500 hectares of the same territory for each one of the nine minor children mentioned. The other denouncement bears Number 2905. The land is situated in jurisdiction of the Territory of Limon within the following boundaries: North, in part the maritime mile which extends from the shore of Cahuita Point to the mouth of Estrella River, and in part this same river; South, the Sixola River and the land of the Colony of San Bernardo; East, the lands denounced by the same persons already mentioned; and West, the Estrella River and public lands. It comprises the same extent of land as the previous one, say 500 hectares for each one of the persons, Astua Aguilar, Lizano Ulloa de Astua, and Rojas Montero, and 500 hectares for each one of the nine minor children. The rights in the first mentioned denouncement were ceded and to-day belong as follows: to John Meiggs Keith

and Faulkner, the rights of Rodolfo Rojas Montero; to the minor children Rosa, Emily, John and Henry Keith Alvarado respectively the rights corresponding to the minor children Lola, Maria, Adilia, and Graciela Rojas Gonzalez; to Minor Cooper Keith and Meiggs the rights which personally belonged to Astua Aguilar; to Mariano Guardia Carazo the rights which corresponded to Carolina de Astua; to Edgar J. Hitchcock, Manuel Montejo Hebert, Don David Andrew Johnston and Stevenson, and Felix Echeverria Zeledon the rights which belonged respectively to the minor children José Antonio, Graciela, Dora and Mercedes Astua Lizano. The rights in the second denouncement were ceded to the same persons already stated. There belongs to each one of them, therefore, 500 hectares in each denouncement. The documents corresponding to each denouncement are following the necessary course in accordance with our law, and are awaiting the respective surveys and plans to be presented by the surveyor appointed for the purpose by this Court.

The present Certificate is issued at the request of John Meiggs Keith in the City of San José, Republic of Costa Rica, 4th day of the month of February, 1905.

(Signed) ALEJANDRO JIMINEZ CARRILLO.

(SEAL OF THE COURT.)

ALEJANDRO CASTRO CARRILLO, Judge of Contencioso Administrativo of the Republic of Costa Rica,

Certifies: that the preceding signature of the Secretary of this Court which reads "Alejandro Jiminez Carrillo" is authentic, and has been given by said functionary in the exercise of his functions, 3d of February, 1905.

(Signed) A. CASTRO CARRILLO.

(SEAL OF THE COURT.)

ALEJANDRO ALVARADO, President of the Supreme Court of Justice of the Republic of Costa Rica,

Declares that the preceding signature of the Judge of Contencioso Administrativo of the Republic, which reads: "A. Castro Carrillo" is authentic.

Palace of Justice, San José, 4th of Feb., 1905.

(Signed) A. ALVARADO.

(SEAL OF THE SUPREME COURT.)

Before me,

(Signed) ALFONSO JIMENEZ.

CARLOS LARA, Sub-Secretary of State in the Department of Justice and Foreign Relations of the Republic of Costa Rica,

Declares the authenticity of the preceding signature of the President of the Supreme Court of Justice, which reads: "A. Alvarado."

San José, 4th of February, 1905.

(Signed) CARLOS LARA.

(SEAL OF DEPT. OF JUSTICE.)

(SEAL OF DEPT. OF FOREIGN RELATIONS.)

CONSULATE OF THE UNITED STATES,  
SAN JOSÉ, REPUBLIC COSTA RICA.

I certify that the above is the true and genuine signature of Don Carlos Lara, Sub-Secretary of State of the Republic of Costa Rica in the Departments of Justice and Foreign Relations.

Given under my hand and the Seal of this Consulate the 4th of February, 1905.

(Signed)

JOHN C. CALDWELL,  
*Consul of the United States,  
San Jose, Costa Rica.*

(CONSULAR SEAL.)

McCONNELL'S POWER OF ATTORNEY by virtue of which he appeared and took part in the legal proceedings relative to the Astua Denouncements through Ricardo Jiménez, his attorney.

Before me Carlos Brenes Ortiz, a notary public of this city, there appeared Herbert Lee McConnell Scott, of age, unmarried, a contractor, a citizen of the United States of America, an inhabitant of Mobile, Alabama, and temporarily in this city and deposed:

That he confers a judicial power of attorney to Mr. Ricardo Jiménez Oreamuno, of age, unmarried, a lawyer and an inhabitant of this city, with the faculties provided for in article one thousand two hundred and eighty-nine of the Civil Code, and the further faculty of appointing substitutes for the said power either wholly or in part, revoking the substitutions and making other new ones. I certify that I know the party appearing here, and that he is in full possession of his civic rights. I issue a first certified copy which I deliver to the said person and collect eight colones by way of fee. Since the executing party does not understand the Spanish language, there acts as interpreter Mr. Luis Anderson Morua, of age, unmarried, a lawyer, and an inhabitant of this city who translated this document into English, a language which the party appearing speaks and which I understand: after the preceding had been read to the executing party in presence of the instrumental witnesses—and I herewith certify that I know them as well as the interpreter to possess the necessary capacity for this act—the former being Manuel Francisco Jimenez, a lawyer, and Pedro Alvarado, a law student, both of age, unmarried, and inhabitants of this city, the executing party declares that he approved thereof, and all sign before me and with me in the city of San José, in the office of Mr. Anderson at two o'clock in the afternoon, on the twentieth of October nineteen hundred and four: Carlos Brenes—H. L. McConnell—Luis Anderson—P. Alvarado—Manuel F. Jimenez. The above is a copy of document number twenty-five, entered on page thirty, back, of volume 8 of my records. Upon comparing same with its original before the executing party and witnesses, it was shown to be conformable. This first certified copy is issued upon request of the executing party, adding

one colon revenue stamp, in the city of San José, at the same time when the original is drawn up.

CARLOS BRENES.  
LUIS ANDERSON.  
H. L. McCONNELL.  
P. ALVARADO.  
MANUEL F. JIMENEZ.

Recorded in the Record of Persons, volume 15, page one hundred and eighty-one, entry 18866. San José, November 16, 1904. José María Acosta. There is a seal, *viz.*: Public Register P. H. P. COSTA RICA.

Provision of the civil code of Costa Rica, referred to in the foregoing power of attorney.

[TRANSLATION.]

ARTICLE 1289. By virtue of the Judicial power for all transactions the mandatary can appear as complainant or defendant in the name of his mandator, in any matter concerning the latter, carry on the suit or suits in their different stages, use all ordinary and extraordinary resources, compromise, settle by arbitration proceedings, demand hearings and reply in such hearings, acknowledge documents, receive moneys and give the corresponding receipts therefor, execute and cancel such documents as may be required in connection with the matter or matters in hand, waive any proceedings, challenge the functionaries of the court and complain of them, or accuse them because of *the injustice of* the decisions rendered, and do anything that the mandator would do if he were present in person, to carry the matters to their conclusion.

DECISION OF THE COURT OF CONTENCIOSO ADMINISTRATIVO REJECTING McCONNELL'S OBJECTIONS.

Court of Contencioso Administrativo of the Republic. San José at three-quarters after nine A.M. on the fifteenth of March one thousand nine hundred and five.

WHEREAS Mr. Herbert Lee McConnell has opposed the present denouncement alleging that the Sixola River is navigable and that the denouncement of the fluvial mile is irrelevant and that this denouncement has lapsed;

WHEREAS the Prosecuting Attorney and the denouncers were notified above opposition, and they all have appeared with the exception of Señor Montejo, who has been accused of contempt, and have denied the right of the opponent to such opposition;

WHEREAS the grounds upon which Mr. McConnell bases his opposition to wit: that the land in question is not denounceable and that this denouncement has lapsed, do not constitute any real or personal right belonging to the plaintiff upon which the claim could be based as required by Section 1st of the Code of Civil Procedure governing admission of claims;

WHEREAS only the Treasury by means of his legal representative could present claims as presented by the plaintiff as it is the only party holding rights upon which to base such claims;

WHEREAS the Prosecuting Attorney instead of supporting the claim of Mr. McConnell requests that the same be rejected as he has no right to present the same and that the denouncement be continued;

WHEREAS from all of the above it appears that Mr. McConnell has no right to make the claim the same is denied:

NOW THEREFORE in accordance with the law above mentioned and with Section 516 of the Fiscal Code the opposition to the present denouncement as presented by Mr. Herbert Lee McConnell is rejected. Surveyor Don Leonidas Carranza shall proceed to the examination of the plan and measures. (Sgd) A. CASTRO CARRILLO.

DECISION of the SUPREME COURT rejecting McConnell's objections,  
and approving the Astua denouncements.

13 Oct., 1905.

First Chamber of Appeals of the Supreme Court of Justice. San José,  
at 3.45 p.m. of the thirteenth of October, 1905.

Concerning title of denouncement of an unappropriated land situated  
in Talamanca, Jurisdiction of Limón and executed before the Judge of  
contencioso administrativo in the republic by Mrs. Carolina Lizano, wife  
of Astua, and Others.

WHEREAS in this matter Mr. Herbert Lee MacConnell presented him-  
self and deposed that in the said denounced tract he had considerable  
cultivations; that article 523 of the Fiscal Code which authorizes the de-  
spoliation of the possession of the planter (will say dispossessment of  
farmer) refers only to such denouncements as are made and brought  
about according to law; that the said denouncement is illegal, both for  
the reasons alleged in his former petitions and also because all the tract  
is comprised in the fluvial mile of the Sixola River as was indicated in the  
survey made thereof;

AND WHEREAS after hearing the parties interested as well as the State  
Attorney, the former at the hearing objected to the assertions of Mr.  
McConnell and asked that he be condemned in the costs, damages and  
losses which he by his proceedings had caused to them and as the State  
Attorney was declared in default for not having been present at that hear-  
ing;

AND WHEREAS the court at 8.45 of the morning of the fourteenth of  
August of the current year, basing itself upon articles 513 of the Fiscal  
Code and 192 of the Code of Civil Proceedings decided the default of the  
hearing as having been proven, and ordered that the parties could resort  
to making use of the rights in the ordinary way;

AND WHEREAS Messrs. Licentiate Ricardo Pacheco, E. J. Hitchcock,  
Mariano Guardia, D. A. Johnston, Felix Echeverría, José Astua Aguilar,  
appealed against this decision and said appeal was allowed in the writ  
returnable before this court where the same has passed through the proper  
proceedings after submitting to it the original files;

AND WHEREAS at 3.30 of the afternoon of the thirtieth of September,  
the court disagreed on the matter in hand, each of the judges handing  
down an opinion of his own, *viz.*, as follows:—

Licentiate Luis Davila stating that (1) Article 509 of the Fiscal Code

forbids the disposal of the tracts comprised in a zone of one mile width along the coast of both the sea and the banks of navigable rivers. (2) That from the files it appears that the denounced tracts were placed by the surveyor who carried out the survey, as being on the left bank of the Sixola River, wherefore, this being a matter of public property, it cannot be cancelled by agreement of the parties, and that, therefore, it is indispensable that for the validity of the sale made of that tract the boundaries of those parts that cannot be denounced, if any there be, should first be ascertained. (3) That the taking of such boundaries is also necessary in order to pass on the petition of Mr. McConnell, since from the result it depends whether his claim can obtain, or not, the application of provision 523 of the Code quoted. (4) That the practical decision as to whether or not a river is navigable and to what extent and the boundary-fixing of the fluvial mile as well as the analogous questions of determining the maritime mile and of the coast which involves matter of national security, politics as well as fiscal questions, comes within the province of the Executive Power, duly in charge of the administration of the country — Therefore he declares that the present denunciation should be held in abeyance until the Executive determine the non-denounceable part of the mile of the Sixola River, wherefore the decision which caused the appeal should be revoked.

Licentiate Benito Serrano stating that, inasmuch as the demarcations of boundaries dividing this Republic and that of Panama has not been effected, and inasmuch as there exists considerable doubt, after the finding as arbitrator of the President of the French Republic on this special point, as to whether or not the tracts denounced and from which Mr. McConnell is to be dispossessed, are or are not, *in toto* or *in parte* excluded from the Costa-Rican territory, the pursuit of the present denunciation should be suspended until the decision in the case can be rendered definitely, since in the contrary case it might happen that this Republic might be exposed to claims coming from the Republic of Panama or coming from Mr. McConnell, and it being suitable that such claims be avoided, wherefore the course of the present matter should be suspended, and thus the decision appealed against should be revoked.

Judge and President Licentiate Alberto Brenes stating that the only point to be taken under consideration by this court should be whether or not the parties should be sent back to the lower court so as to discuss the opposition manifested by Mr. McConnell, and that since this gentleman did not claim any actual right to the tract, but merely his right as an

improving possessor, he is not a party entitled to oppose the continuation of the denouncement proceedings, since the only right he has is that of demanding that the improvements made by him should be recognized in compliance with provisions 523 of the Fiscal Code; he, therefore, votes that the decision appealed against should be reversed, and that the objection of the said McConnell be denied, and that he be condemned in the costs of the appeal.

At three o'clock of the afternoon of third of the current month of October a new vote was taken on the case, and since the three judges confirmed their votes, it was decided that the matter should come before the full bench in compliance with article 73 of the Code of Civil Proceedings in order that assistant judges might be drafted, and thus the deadlock be broken.

The Court having been supplemented by the assistant judges, Messrs. Aguilar Barquero y Zelaya, the matter was further taken under advisement, with the result that the said assistant judges and President Brenes agreed upon the reversing of the said judgment and declaring that Mr. McConnell has no right to oppose the continuation of the denouncement proceedings for the reasons mentioned later on, and that said proceedings should be continued with the limitation, however, that the fluvial mile should be respected, as far as the part of the Sixola River where it is navigable is concerned.

AND WHEREAS the objection raised by Mr. Herbert Lee McConnell lacks all foundations because the said gentleman is not a party entitled to appear under any form whatsoever in the present denouncement, since he neither alleges any right of ownership to the tract involved nor even the right which he might possess as an earlier denouncer of the same land, limiting himself to alleged rights of an improving possessor and to making sundry allegations concerning the invalidity of the denouncement and the non-denounceability of the tracts comprised therein;

AND WHEREAS the fact that the opponent has made improvements on national property does not give him any rights to demand that his possession be respected, as long as he has not shown that he had complied with the formalities indicated in section 530 of the Fiscal Code;

AND WHEREAS as regards the lapse of the denouncement, it is to be remembered that the law of the first of April, 1896, referred to the denouncements of unappropriated land *then* pending (at that date), but not to those which were made subsequently, to which the present one belongs;

AND WHEREAS, as concerns the fluvial mile of the Sixola in the extensions in which the same according to the law cannot be denounced, it is fit to

declare that the auction or awarding shall not comprise it if the same be actually included in said denouncement, either in part or entirely (decreet of the 27th of March, 1895):

NOW THEREFORE the decision appealed against shall be reversed, the objection of the said Mr. McConnell is to be denied, the denouncement can be proceeded with, and the auction or awarding taking place with the saving of what has been specified above.

ALBERTO BRENES.  
BENITO SERRANO.  
LUIS DAVILA.  
F. AGUILAR B.  
A. ZELAYA.  
J. R. ARGUELLO DE VARS, *Clerk.*

NOTE.—Judge Luis Davila formulated his vote in the present case as follows:—

He conforms to the previous decision, but opines that

WHEREAS, as the majority of the court assumes, the decree of the first of April, 1896, does not apply to the present case as regards the caducity, inasmuch as the provision found there in this respect refers expressly to the titles then in course of issuing, without that the Decree of the 29th of July of the same year and the later ones which have suspended the denouncements of unappropriated land reproduce the rule of the caducity *de facto*, wherefor in this point the provisions of the Fiscal Code obtain;

AND WHEREAS Mr. McConnell in compliance with the doctrine of article 837 of the Civil Code and 3 of the Code of Civil Proceedings possesses the rights of a party to oppose himself to the disposal of the land in that part which is not denounceable, while being excluded from the denouncement, his position (*status*) is governed by the provisions of article 523 of the just now quoted code, if his cultivations were in the denounceable part, and since in this assumption his opposition is not founded;

AND WHEREAS, when the law granted to the Executive Power the supreme right of inspection as regards the disposal of unappropriated land, it needs must have by implication granted him the right of determining administratively that which cannot be denounced in this case, for, if it were *not* so, one could not see how he could properly discharge his duties in this kind of business:

THEREFORE, and in agreement with the former reasons alleged, he opines

as the majority does, but with the reservation that the demarcation of the fluvial mile should be effected by the Executive Power.

LUIS DAVILA.  
J. R. ARGUELLO DE VARS, *Clerk.*

NOTE.—Justice Benito Serrano accepts the previous conclusions saving the conclusion.

V. BENITO SERRANO.  
J. R. ARGUELLO DE VARS, *Clerk.*

Entered in the book of votes of the present year, on pages one hundred and twenty-six to one hundred and thirty-four. Compared with original these presents were found correct. *✓*

San Jose at one P.M. on the twenty-fourth of October, 1905.

J. R. ARGUELLO DE VARS, *Clerk.*  
Allowed: ALBERTO BRENES.

DECREE of the Court of Contencioso Administrativo authorizing and directing the execution of a deed of the lands covered by the Astua Denouncement to the Northern Railway Company

(26 January, 1906).

In the Court of Contencioso Administrativo of the Republic at San José at one o'clock P.M. of the twenty-sixth January, 1906, there appeared before the undersigned Dona Carolina Lizano Ulloa de Astua, Don José Astua Aguilar, counsellor, and Don Rodolfo Montero, artisan, of full age, married, the first two being residents of this city and the third one of the city of Heredia. They all appear in their own right and behalf, and the second one named also as representative of his children José Antonio, Garciela, Dora, Mercedes y Margarita, who are infants; and the third one named also as representative of his children Lola, María, Adilia y Garciela, who are infants. They all appear for the purpose of denouncing five hundred hectares of land for each one of them and five hundred hectares for each one of the infants represented by them. The said lands being unappropriated lands situate in the Zone of Talamanca, sole district "Canton unico" of the Comarca de Limón.

IT APPEARING that the advertisement of such denunciation in the *Official Gazette* was ordered, and the order complied with and the term to hear oppositions to the granting of the lands denounced having expired

without any opposition being made, the denunciation was accepted and the survey of the lands ordered, the surveyor being appointed for that purpose.

IT APPEARING that by virtue of cessions made by the denouncers, with the proper judicial authority as regards the rights of the infants, of their rights under the denunciation in favor of Mr. John Meiggs Keith Faulkner and his children Rosa, Emily, John, and Henry; Mr. Minor Cooper Keith y Meiggs; Don Mariano Guardia Carazo; Mr. Edgar J. Hitchcock Kinyon; Don Manual Montejo Heber; Mr. David Andrew Johnston y Stevenson and Don Felix Echeverria Zeledon.

IT APPEARING that the survey and plan were approved and that certain exclusions were made afterwards by order of the Superior Tribunal in its decision regarding a petition opposing the adjudication of lands and which matter was disposed of by the decision of the said Tribunal.

IT APPEARING that the operation ordered by the Superior Tribunal consisting in the exclusion of the part of the zone not subject to denunciation which had been included in the original survey was made by the surveyor and duly approved the said lands appear to comprise five thousand eight hundred and fifty hectares and five thousand nine hundred and fifteen square meters excepting the two per cent. for roads as provided by law the said lands being bound as follows: On the North by unappropriated lands and the marine zone, on the South by the Sixola River, on the East by the said Sixola River and part of zone not subject to denunciation and on the West by unappropriated lands.

IT APPEARING that at this stage of the proceedings new cessions were made by which Licenciado Astua Aguilar as duly authorized executor transfers the rights of his daughter Margarita, deceased, and the other parties interested likewise transfer all their rights to the Northern Railway Company duly represented by its attorney Mr. M. Keith who in the name of said company has accepted such transfers.

IT APPEARING that the said Keith as such attorney requests the approval of such cessions, and that he be considered as the only party to this proceeding and also that all lands mentioned in the survey be adjudicated to the company represented by him on account of the eleven thousand and odd hectares to which the said company is entitled under the terms of deed executed by the Municipality of the Canton Central of the Province of Cartago which Municipality duly authorized sold to the said company the eleven thousand three hundred and fourteen hectares five thousand two hundred and fifty-three square meters to which lands the said Municipality

is entitled by virtue of Decree No. 53 of the 18th August 1904 and other orders mentioned therein.

IT APPEARING that the District Attorney (Promotor Fiscal) assents to the granting of the request of the said attorney, and has agreed with him to fix the price of the said adjudication for fiscal purposes in the sum of three "colones" per hectare, all legal requirements being thus complied with; and

WHEREAS the parties hereto have accepted the operation recently made by the surveyor which operation leaves out of the original survey the part that the same should not have included the surface shown by the report which should be approved must be considered as the surface of the lands denounced; and

WHEREAS cessions of their rights have been legally made by all parties interested in the lands denounced in favor of the company organized under the laws of the State of New Jersey one of the United States of America with domicile in Jersey City duly registered in this Republic under the name "Northern Railway Company" the lawful attorney of which company is Mr. John Meiggs Keith as appears from the document filed by him the said cessions should be approved the said company considered as the only party to the proceedings and the presence of Mr. Keith as attorney a sufficient representation of the said company; and

WHEREAS it appears from the deed filed that the said company is the owner by virtue of purchase from the Municipality of the Canton Central of the Province of Cartago of the rights of the latter to the free assignment of eleven thousand three hundred and fourteen hectares five thousand two hundred and fifty-three square meters of unappropriated lands the assignment should be granted as the said lands are unappropriated; and

WHEREAS the appraisement of the said lands is only for fiscal purposes as the assignment of the same is gratis the said appraisement should be accepted and decreed in accordance with the petition:

NOW THEREFORE the operation made by the surveyor recently is hereby approved and his report thereon is considered as a complement of the survey. Cessions of rights acquired by the denunciation (*denuncio*) in favor of the Northern Railway Company are likewise approved. The cessionary is considered as the only party in these proceedings and Mr. Juan Meiggs Keith Faulkner as its lawful attorney by virtue of the power filed by him and which shall be returned to him after the proper notation is made. The lands mentioned in these proceedings are hereby assigned to the said company. The said lands comprising five thousand eight hundred and fifty

hectares and five thousand nine hundred and fifteen square meters excepting the two per cent. for roads. The said lands being situate in Talamanca, in the jurisdiction of the Comarea de Limon, and bounds as follows: On the North by the Marine Zone, and unappropriated lands; on the South by the Sixola River; on the East by the Sixola River and part of the Marine zone of same not subject to denunciation; and on the West by unappropriated lands. These lands are given on account of a larger amount to which the said cessionary is entitled as successor to the Municipality of the Canton Central de Cartago as appears from the deed filed, and which shall be returned to the said cessionary after the proper notation is made. For fiscal purposes the price of the said lands is fixed in seventeen thousand five hundred and fifty-one "colones" seventy-one and a half cents. It is hereby ordered that this decision be notified to the Accounting Department of the National Treasury and to the Executive with whose approval a public deed to be the title of the said company to the lands mentioned shall be executed.

A. CASTRO CARRILLO.  
L. ZUMBADO.  
R. RODOMIRO ORIGGI.

PROTEST of McConnell to the Decree authorizing the deed to the Northern Railway Company (22nd February, 1906).

FIRST: *To His Honor the Judge of Contencioso Administrativo*  
(Denouncement of Mrs. Carolina Lizano Ulloa et al.).

I, Ricardo Jimenez, known in this proceeding as legal attorney of Herbert Lee McConnell, respectfully submit:

Your petitioner was of the opinion that in these proceedings no new step had been taken, and he was of the opinion because no notification had been sent to him. With surprise he learned to-day that the matter had advanced further, and had even come as far as the adjudication of almost all the land to the grantees of the denouncers.

This adjudication was effected in contravention of the resolution of the Court of Appeals, which called for the exclusion from the denouncement of the fluvial mile of the Sixola. The acting parties in derision of this order of the Superior Court, and which is worse, with the consent of the District Attorney, limited arbitrarily this fluvial mile to the marshes of the mouth of the Sixola, which are of no use to them for planting bananas, so that according to them and according to the district attorney the Sixola

is navigable to the extent of only a little more than a mile, in spite of the fact that any school child who knows the geography of the country, knows that this river is navigable to the extent of many miles.

It will be said that, if the district attorney makes up his mind to surrender the rights of the Republic in favor of Mr. Keith, it is none of Mr. McConnell's business, because the Courts said that he could not oppose himself to the denunciation made here. The petitioner hastens to reply to this specific argument.

First: Mr. McConnell could not oppose himself to the denunciation; that is, not to a denunciation permitted by the court, which does not comprise the fluvial mile, and since on this fluvial mile McConnell has cultivated land as he has affirmed in these files, without contradiction on the part of his opponents, it is clear that he becomes a legitimate party when he petitions that that which the Superior Court has decreed concerning the exclusion of the fluvial mile should be respected.

Moreover, if it were certain that the Sixola is not navigable beyond its mouth, the proceedings would still be imperfect if McConnell were passed over, inasmuch as, according to article 523 of the Fiscal Code, every denouncer must pay for the improvements made by a third party in the land denounced, and for this purpose it is necessary that such improvements be appraised by experts before submitting the land to public auction, and still more so before adjudicating the land to the bidder or to the denounceer. Everything done, therefore, since the failure to inform Mr. McConnell is null and void, as effected, without the intervention of a legitimate party. Article 1102 of the Code of Civil Proceedings. Therefore, the undersigned interposes, as secondary point of litigation, the above matter, so as to bring about the declaration of said cancellation, and in order that the proceedings may take place in legal form in the presence of the parties interested, to fix the fluvial mile, which is to be excluded, and in order that if the plantations of Mr. McConnell are found to be within the land which legitimately can be denounced they may be appraised by experts in order that these improvements be indemnified before any adjudication of the land be made.

I again elect domicile as before for notifications.

San José. February 22nd, nineteen hundred and six.

RICARDO JIMENEZ.

DEED of the lands included in the Astua Denouncements to the Northern Railway Company dated 14th of March, 1906.

Matter of Carolina Lizano.

Adjudication of unappropriated land in favor of the Northern Railway Company at 10 A.M. on the 14th of March, 1906. In the District of Limon.

Presented at 1:10 March 14th 1906 under 4493, folio 542, tomo 80.

*I, JOSE LUIS SAENZ PACHECO, a notary domiciled in this capital, by virtue of the resolve inserted at the end, protocolize herewith the following documents:*

Survey of the Republic: Punta de Mona, jurisdiction of the District of Limon at twelve o'clock of the fifteenth of November nineteen hundred and four.—Eight o'clock A.M. of the seventeenth of the present month of November is fixed for taking the survey to which this decree refers. Agustin Gutierrez, Alberto Rodriguez, Joaquin Gonzalez. Survey of the Republic: Punta de Mona, at eight o'clock A.M. of the seventeenth of November nineteen hundred and four. As witnesses who are to be present at the survey Messrs. Enrique Peyrouet and Viriato Espinach are here-with appointed. Agustin Gutierrez, Alberto Rodriguez, Joaquin Gonzalez. In pursuance of the above there are present Messrs. Enrique Peyrouet and Viriato Espinach, both of age, the former married, an engineer, domiciled in the city of Limon, the latter unmarried, a farmer and domiciled in the city of San José, were informed of their having been appointed as witnesses, they accepted and took oath that they would carefully and faithfully fulfil the duties imposed upon them. Agustin Gutierrez, Viriato Espinach: E. Peyrouet, Alberto Rodriguez, Joaquin Gonzalez. To the Judge of Contencioso Administrativo: I the undersigned surveyor appointed by you for carrying out the survey of the tracts to which this court's decree refers, have the honor of reporting: at eight o'clock A.M. of the seventeenth of November of last year, this being the day and month indicated, I repaired with the witnesses, chain-bearers, assistants and other employees (officials) of the commission to the right bank of the Gandoca River at its outlet into the Atlantic Ocean, and we then started from there the survey of the beach in order to trace the maritime mile involved, in the following manner: S. E.  $49^{\circ}$ , 444 meters; S. E.  $53^{\circ}$ , 373 meters; S. E.  $60^{\circ}$ , 294 meters; S. E.  $73^{\circ}$ , 182 meters; S. E.  $63^{\circ}$ , 740 meters; S. E.  $56^{\circ} 15'$ , 1,370 meters; S. E.  $58^{\circ} 15'$ ,

1,075 meters; at the end of this distance we came to the left bank of the Sixola River at its outlet into the Atlantic Ocean, and we went up stream on the same side in the following directions and distances: S. E. 26, 64 meters; S. W. 12, 50 meters; S. W. 40, 108 meters; S. W. 20, 90 meters; S. W. 2, 250 meters; S. W.  $36^{\circ} 30'$ , 128 meters; S. W.  $15^{\circ} 30'$ , 134 meters; S. E.  $13^{\circ} 30'$ , 125 meters; S. E. 32, 323 meters; S. E.  $53^{\circ} 45'$ , 192 meters; S. E. 57, 412 meters; S. E.  $27^{\circ} 30'$ , 462 meters; S. E. 15, 180 meters; S. E.  $4^{\circ} 30'$ , 205 meters, and from this point we traced the maritime mile in a line parallel to the sea and to a distance of one thousand six hundred seventy-two meters, in compliance with the prescribed rules as follows: N. W.  $63^{\circ}$ , 1,870 meters; N. W.  $58^{\circ} 45'$ , 1,145 meters; N. W.  $56^{\circ} 15'$ , 1,175 meters; N. W.  $62^{\circ} 45'$ , 1,485 meters; N. W.  $51^{\circ}$ , 933 meters, and finally tested the distance whence we have started the survey and found as result 1,672 meters in northeasterly direction,  $41^{\circ}$  in a line perpendicular to the sea at that point, and with that operation we ended the part concerning the measurement of the maritime mile. We then proceeded at once to the general survey of the tracts as follows: S. W.  $20^{\circ}$ , 8,920 meters; N. W.  $52^{\circ} 45'$ , 9,555 meters; N. W.  $64^{\circ} 45'$ , 9,840 meters; S. W.  $79^{\circ}$ , 2,205 meters, with that distance we arrived at the left bank of the Sixola River at the termination of the road that leads from Old Harbor to Cuabre and we continued the survey, down stream along the Sixola on its left bank as follows: (*here follow a great number of courses and distances*), at the end of which distance we come to the known point where begins the line that separates the maritime mile from the tracts surveyed, and where therefore the measuring of the whole perimeter comes to an end. Respectfully yours, Agustin Gutierrez.

SAN JOSE, February third, nineteen hundred and five.

*To the Judge of Contencioso Administrativo:*

Since the work covering the survey of the land to which this file refers has been completed, I beg to inform you that this survey was carried out in 45 days; for the work we used a chain of twenty meters and a compass with prisma and absolute numeration, number 360 corresponding to *North*, 90 to the *East* and continuing in that direction all the other points. The land surveyed is flat quite near the Sixola River, but not so in the parts removed from that river, where there are sundry hills and even mountains of fair height. The quality of that land is in its larger part good for cultivating cacao, bananas, and other tropical products, as is seen from sundry plantations which I had a chance of visiting. There is plenty of

water, but not of good quality, because the greater part of the rivers and brooks which are tributaries of the Sixola River comes from swamps and marshy lands. Owing to the general exuberant growth of vegetation, there are many large trees, but the greater part of the trees are not good for construction purposes because of the bad quality of the wood.

There are no natural pasture grounds of any kind. Finally the distance between the mouth of Sixola River and Limon City following the coast of the ocean is eighty-three kilometers, because from the former point to the building erected by the Municipality of Limon at Cahuita there are 43 kilometers according to the survey made by the undersigned and from the latter point to Limon as far as could be learned there are forty kilometers. In the straight line from the Sixola to Limon, I am told, there would be say 60 kilometers more or less. Enclosed corresponding plan made on the scale of 1-10000 as ordered by you. The surface has been calculated in compliance with the exact system called Latitudes and Distances, which gave as a result a total surface of six thousand one hundred and twenty hectares, from which we deduct two per cent. for roads, in accordance with article 2º of the decree of the six of August eighteen hundred and ninety-two, leaving six thousand hectares which is the area denounced. San José, February fourth, nineteen hundred and five. Judge of the Court of *Contencioso Administrativo*, Agustin Gutierrez, E. Peyrouet, Viriato Espinach.

*To the Judge of Contencioso Administrativo:*

I have revised the plan of lands denounced by Carolina de Astua and associates in Sixola and transferred to the United Fruit Company, and the same together with the papers belonging thereto is quite correct: Enclosed the two copies required by law. San José, March 22, 1905. Leonidas Carranza.

Court of Contencioso Administrativo of the Republic. San José at two P.M., November 18th, 1905.

Comply with the decree of the Superior Court, and deliver therefore the original decrees to the Surveyor Licentiate Agustin Gutierrez who surveyed the land in question in order that he separate the part of the "prohibited mile-tract" which he might have comprised in his operations, for which he is allowed 30 days' time. A. Castro Carrillo, Alejandro Jimenez Carrillo.

*Judge of the Contencioso Administrativo:*

In compliance with your order of 2 P.M. of the eighteenth of November of last year, the following is respectfully submitted by the undersigned: The prohibited mile on the Sixaola River extends in normal times up to three thousand seven hundred meters up stream from the mouth of that river, but in view of the fact that during the great tides of the year that rise of the sea might extend as far as six thousand four hundred and thirty meters from its mouth, where the difference in the level of the river water is more than two meters and, although the greatest tides could not reach this distance since the height of these tides at the Atlantic never comes up to one meter 50 centimeters, especially if one considers also the resistance offered to the inflow by the descending water of the river, I would say that notwithstanding these evident considerations, I have thought proper to extend to this point the place where the part of the forbidden mile on the Sixaola River should be cut off. I have therefore started to survey the part which is to be deducted from the general area, from the Estacion 194 as follows (see top of 7), at the end of this distance we come to the end of the mile which belongs to the ocean (*i. e.*, the maritime mile), and this is then bounded by the following directions and measurements: N. W.  $63^{\circ}$  1,870 meters; N. W.  $58^{\circ} 45'$  1,145 meters; N. W.  $56^{\circ} 15'$  48 meters, and from that point a perpendicular line is drawn to S. W.  $33^{\circ} 45'$  and with a distance of three hundred and eighty meters we reach Estacion number 194 or the point where the previous operation had been started, therefore the part which legally is not denounceable has been separated from the general tract. After calculating the area of the land comprised within the preceding perimeter we obtain a surface of one hundred and forty-nine hectares four thousand eighty five square meters, which subtracted from the total area of six thousand hectares reduces the denouncement to which this file refers to five thousand eight hundred and fifty hectares and five thousand nine hundred and fifteen square meters with the following boundaries: North: maritime mile and unappropriated land, South: Sixaola River, East the same Sixaola River, and the part of the undenounceable mile of this river and to the West unappropriated land. With red ink I have marked in the plan returned to you the part which must be subtracted as being comprised in the undenounceable mile. I have therefore complied with the order of yours referred to in the beginning of this report. San José, December eleventh, nineteen hundred and five. Agustin Gutierrez.

*Judge of Contencioso Administrativo:*

I proceeded with the operation necessitated by the above decree, and it is seen that the work done by the surveyor is well done. The part separated is therefore as indicated in his report of the 11th of the current month. I return this with the corresponding plans. San José, December 15th, 1905. Leonidas Carranza.

*Court of Contencioso Administrativo of the Republic. San José, at one P.M. of January 26th, 1906.*

The parties, Mrs. Carolina Lizano Ulloa de Astua, housekeeper, José Astua Aguilar, Lawyer, and Rodolfo Rojas Montera, mechanic, of age, the first two married, living here and the third one living in the city of Heredia, appeared before this court for themselves, the second also in representation of his minor children of legitimate birth, José Antonio, Graciela, Dora, Mercedes, and Margareta Astua Lizano, all of them still quite young, the third party also in representation of his legitimate children under age Lola, María, Adilia and Graciela Rojas Gonzales, these four going to school, denoumeing five hundred hectares of land for each and five hundred hectares for each of the minors aforesaid, of unappropriated land situated in the Zone of Talamancá, sole district and sole Canton of the County of Limón.

WHEREAS the publication of said denouncement in the *Official Gazette* had been ordered and this has been done, and whereas the time allowed for opposition had passed without any such being presented, and whereas the parties interested submitted a request to that end, the denouncement was admitted, the survey of the land was ordered and a surveyor appointed to that end; Whereas by virtue of certain transfers made by the denouncing parties, with the permission of the court as far as those under age are concerned, the right acquired by the denouncement passed over to John Meiggs Keith Faulkner, and his children under age Rosa, Emily, John and Henry Keith, Minor Cooper Keith y Meiggs, Mariano Guardia Carazo, Edgar Hitchcock Kinyon, Manuel Montejo Herbert, David Andrew Johnston y Stevenson, and Felix Echevarria Zeledon;

WHEREAS after the survey had been completed and the documents and plans thereof had been revised without objection, they were approved, a subsequent exclusion had to be made however by order of the Superior Court during the pendency of judgment on some opposition that had been raised and which was settled by judgment of the court;

WHEREAS, after the proceeding ordered by the superior court consisting in

cutting out from the lands surveyed the part of the non-denounceable mile which might have been comprised therein had been complied with by the surveying engineer and approved by the auditor, the report of these latter made it evident that the land comprises a surface of five thousand eight hundred and fifty hectares and five thousand nine hundred and fifteen square meters, after deducting the two per cent. required by law for ways and roads, with the following boundaries: To the north the maritime mile and unappropriated land, to the south the Sixaola River, to the east the same Sixaola River and the part of the non-denounceable mile of said river and to the west unappropriated land;

WHEREAS, at this stage of the matter there have been presented new transfers by means of which the licentiate Astua Aguilar as duly appointed executor transfers the rights to the said denouncement held formerly by his deceased daughter Margarita, and the other parties interested transfer all *their* rights to the Northern Railway Company represented by its legal agent John Meiggs Keith, who in its name has accepted such transfers;

WHEREAS the said Mr. Keith, in his character as above, petitions for the approval of the transfers made in favor of his grantor, and that he therefore be considered as sole party, also that there may be awarded to the company he represents all the land surveyed to which the denouncement refers on account of the eleven thousand and more hectares to which it is entitled according to the accompanying deed: the latter shows that the municipality of the Canton of the Province of Cartago, duly authorized, sold to the company the eleven thousand three hundred and fourteen hectares five thousand two hundred and fifty three square meters of land to the free award of which it was entitled according to decree number 53 of the eighteenth of August nineteen hundred and four and other provisions therein cited;

WHEREAS the district attorney approves entirely of the petition and agrees with the agent of the company interested in fixing as price of the adjudication for the state that of three colones per hectare whereby the formalities required in the case are met and whereas the work of the surveyor has been accepted by the parties which excludes from the original survey that part which should not have been comprised therein, so that now as surface of the land denounced that which is indicated in the corresponding report must be considered and approved;

WHEREAS transfers have been made by all the parties interested in the denouncement according to the law, said transfers involving the rights acquired by them, to the Company which has been organized

according to the laws of the State of New Jersey, U.S.A., with its principal office at Jersey City, properly registered here in this state and known under the name of the Northern Railway Company, represented by John Meiggs Keith, as legal attorney, according to power submitted proving such fact, and whereas said transfers should be approved, the said company is considered as sole party and the identity of Mr. Keith established to the satisfaction of the court;

WHEREAS the company aforesaid has shown itself by deed to be the owner by purchase from the Municipality of the Canton Central of la Provincia de Cartago, of all rights possessed by the latter to the free adjudication of eleven thousand three hundred and fourteen hectares five thousand two hundred fifty-three square meters of unappropriated land, the adjudication which is asked on account thereof is admissible because the land involved and to which the petition refers, has the character of unappropriated land and there exists no exception in the case in hand. Whereas, as regards the appraisement involved, and agreed upon, this formality is merely a matter of the fiscal rules, because a free award is involved, wherefore it should be accepted, and a decree issued which allows the petition on the basis of all that has been explained above:

THEREFORE, The proceedings made of late by the surveyor shall be and are hereby approved, and his report on the matter is to be considered as supplementary to the documents covering the survey: also the transfers made of all the rights acquired by virtue of the denouncement, to the Northern Railway Company are approved; the assignee is considered as sole party in these decrees and as legal agent of the same is admitted Mr. John Meiggs Keith Faulkner, of age, married, contractor and an inhabitant of this city, pursuant to a power of attorney, which shall be returned to him after due cognizance has been taken thereof, and the said company shall be adjudicated the land to which this document refers, consisting of five thousand eight hundred and fifty hectares and five thousand nine hundred and fifteen square meters, aside from the two per cent. for roads, situated in Talamanca, jurisdiction of the District of Limon and bounded as follows: To the North the Maritime mile and unappropriated land, to the South the Sixaola River, to the East the Sixaola River, and the part of the non-denounceable mile of that river, on the West by unappropriated land, on account of the larger amount to which it is entitled as successor of the Municipality of the Canton Central of Provincia de Cartago, as is shown by the accompanying deed which shall be returned after it has been noted in these files, and an entry has been made thereon.

As price of the land which has been adjudicated the sum of 17,551 colones 77½ centimos is fixed for the purposes of the state treasury and report of this decree shall be sent to the National Treasury Office and submitted to the executive power with whose approval the public deed will be executed which is to serve as a title of property to the company which has received the adjudication. A. Castro Carrillo.—L. Zumbado R. Rodomiro Origgi.

San José on the 10th of March, 1906, in compliance with the provision of article 529 of the Fiscal Code the decree issued in this city by the Judge of *Contencioso Administrativo* is approved at 1 P.M. of the 26th of January, 1906, and this file is to be returned to the same official for the purposes thereof. Signed by the President Echeverria, Judge of the *Contencioso Administrativo* in the Republic. San José at half-past eight A.M. of the 13th of March, 1906. Inasmuch as the decree of adjudication has been approved by the executive power for the land to which this file refers the title covering the same is to be executed and the notary public José Luis Saenz is to be instructed to protocolize the corresponding documents which will serve as title for the party interested. A. Castro Carillo.—Ed. Gomez S. Rodomiro Origgi.

*I certify that the decree in which the adjudication is ordered is in perfect order and that the parties interested renounce the right of personal summons concerning the matter referred to above I affix 35 colones and 12 centimos in revenue stamps on the first certified copy which is issued herewith and deliver the same to Mr. Keith. Fees, 20 colones. The above instruments have been read and compared with the originals in presence of witnesses Rafael Trejos, unmarried, law student, and Manuel Venegas, married, a clerk, both of age and domiciled here whom I certify to know and to possess the necessary legal capacity. The documents show this to be correct. Signed with the witnesses mentioned above in the city of San Jose at 10 A.M. on the 14th of March, 1906.*

JOSÉ LUIS SÁENZ.  
RAF. TREJOS.  
MANUEL VENEGAS.

This is a copy of document No. 10 taken from page 5 (back) to 9 (back) of the second volume of my protocols.

This first certified copy was duly compared with its original before the witnesses mentioned and proved to be conformable and the same is issued

upon the petition of Mr. John Meiggs Keith at the same place hour and date as the original.

JOSÉ LUIS SAENZ.  
RAF. TREJOS.  
MANUEL VENEGAS.

Registry fee 8 colones.

SAENZ.

(Seal of the registry office.)

Fees 7 colones. Recorded in the registry of deed, District of Limon, volume 651, page 525, property 1099, entry No. 1. San José, March 16th, 1906.

JOSÉ MARÍA ACOSTA.

(Seal of the Public Registry of Deeds, Persons,  
and Mortgages, Republic of Costa Rica.)

LEGAL PROCEDURE through which the Northern Railway Company obtained possession of the land included in its deed on which McConnell's plantations lie.

24th March, 1906.

SECOND: *To His Honor the Judge of Contencioso Administrativo* (File No. 2904. Denouncement of Unappropriated Land in the Jurisdiction of Limon, in the zone of Talamanca):

I, Edgar J. Hitchcock, attorney of the Northern Railway Company, as shown by the accompanying power, and which I beg to have recorded, and to be returned to me thereupon, respectfully submit, as follows:—

The land to which this denouncement refers has been adjudicated to the said company, and also the title of property has been issued, which title was duly recorded in the registry of deeds. The Company should therefore be put into possession of the land adjudicated, and I therefore petition Your Honor that you, through the authorities of the district of Limon, whom you may see fit to put in charge thereof, or in whatever form you consider proper, put this company into possession of the land belonging to the same according to the plan and survey documents. I herewith commission in the name of the company Mr. C. G. McGrigor, of Limon, to receive the possession from the hands of the authorities.

San José, March 24th, nineteen hundred and six.

(Sig.)                  E. J. HITCHCOCK.  
                            RICARDO PACHECO.

20th April, 1906.

*To His Honor the Judge of Contencioso Administrativo* (File Number 2904. Denouncement of Unappropriated Land in the Jurisdiction of Limon, Zone of Talamanca):

I, Edgar J. Hitchcock, known as party in these proceedings, respectfully submit:—

With real surprise I have learned that you have decided to reserve the decision on my petition concerning possession of the adjudicated lands for the time when the last opposition of Mr. McConnell is disposed of. I most respectfully call the attention of Your Honor to the fact that the present denouncement is a settled matter, by dint of the approbation given by the government and by dint of the issue of the title, and that

to reopen the same taking in consideration the last opposition would mean a violation of Article 115 of the constitution, and other laws which establish and guarantee the definitiveness of judicial decrees. I also call your attention to the fact that by a favorable decision extant in the proceedings of the first chamber of appeals, it has been declared that the opponent, Mr. McConnell, does not possess any right to intervene in these proceedings. For these reasons the new opposition should be rejected *ex officio* as irrelevant (see Article 1102 of the Civil Proceedings). If the party interested has any claims to present he should proceed in the legal course and form. I again petition that in compliance with the law the company be given the material possession of that which has been adjudicated to it. To proceed in any other manner would mean to attribute greater importance to the pretensions already denied of a private person, than to a decree of the courts, than to a legitimate and recorded title, and than to a definite order of the supreme government, the only one possessing the faculty to definitely approve the adjudications of unappropriated lands, and to object thereto if they are illegal. The district attorney concurs with what has been stated above.

San José, April twentieth, nineteen hundred and six.

E. J. HITCHCOCK.

23d April, 1906.

Court of Contencioso Administrativo of the Republic. San José, at eight fifteen A.M. of the twenty-third of April, nineteen hundred and six.

Mr. Edgar J. Hitchcock, as general agent of the Northern Railway Company, presented himself petitioning that his mandator be put into possession of the land to which this denouncement refers, for which a title of property has been issued, which has been duly recorded in the registry of deeds.

WHEREAS, after the presentation of this petition there was found to be pending another of Licentiate Ricardo Jiminez, as legal agent of Herbert Lee McConnell, in which the same alleges an incident of nullity, of that which had been enacted, inasmuch as it had been omitted to notify hereof his mandator, as fact without intervention of legitimate party, so that it was decided to reserve the decision on the first one, until it should be in order, a hearing concerning the said incident having been decreed, and being pending, and whereas the said Mr. Hitchcock acting for the company which he represents alleges that the denouncement

involved is a settled matter, in virtue of the approbation given by the government and in virtue of the issue of the title, and likewise that pursuant to a favorable decree of the first chamber of appeals it has been declared that Mr. McConnell has no right to intervene in the proceedings, petitioning again for the material possession of that which had been adjudicated in which the district attorney concurred, stating that he was conformable, wherewith the hearings fixed concerning the incident of nullity involved here have been satisfied, and considering that here a matter already terminated by all the formalities required therefor is involved, so that the incident alleged is not admissible, and should so be declared, and in consideration of the fact that as regards the possession petitioned for must be allowed, as soon as the adjudication decreed is final, with all the formalities required in the case, and in further consideration of the fact that the land involved here is situate in the jurisdiction of the district of Limon, it is conformable with the law that the civil judge of that place be commissioned for carrying out the said act. For the reasons expounded, it is herewith decreed that the incident of nullity set forth on the part of Mr. McConnell is untimely, and therefore irrelevant in these proceedings, and that material possession of the land adjudicated be given to the company interested, wherefore the civil judge of the district of Limon is commissioned to whom therefore the original acts in the case shall be sent.

A. CASTRO CARRILLO.

ALEJANDRO JIMINEZ CARRILLO.

26th April, 1906.

*To His Honor the Judge of Contenioso Administrativo (File No. 2904. De-  
nouncement of Mrs. Carolina Lizano de Astua et al.).*

I, Ricardo Jiménez, known in these proceedings, submit to you: You have seen fit to declare without justification the exceptions of nullity alleged by me and to cause to be delivered to the company represented by Mr. Hitchcock the lands without previous payment of the cultivation existing there.

To order this you accept the citation from the constitution made by the author of the petition of the twentieth of April. Incidentally, inasmuch as Mr. Pacheco in the whole of this petition entirely setting aside the courtesy which should prevail amongst colleagues, treats my last proceeding as irrelevant, I would like to be permitted to express my surprise

at the fact that Mr. Pacheco, who has trodden under foot the constitution and has assisted in doing so continually, should be so bold as to cite it now showing himself a very good friend of it, as it were. I thought that that which he was obliged to in order to pay it his last homage was never to pronounce its name. I see that with equal disingenuousness he treads it under his feet or pretends to obey it. He is angered at the fact that I should insist on still asking justice for my client, probably this is madness of mine. It seems that it is the duty of the president, of his ministers, of the state attorney and of the justices, to hasten to satisfy the slightest desires of Mr. Keith. Nevertheless, so great is my belief in the force of reason, that I refuse to accept this theory, and insist on petitioning again and again that Mr. McConnell be done justice. The quotation of the constitution is badly applied, because here there is not a settled matter or process, nor perhaps even a declaratory judgment. Mr. McConnell is a party in these proceedings no longer as opponent of the denunciation, assuming that the decree of the court in this respect has been rendered correctly, but as the possessor of improvements made in the land denounced. From the very start he has insisted on his quality as such, it has not been contested, and the uncommon fact that the denouncers ask the judicial delivery of the land shows that it is necessary to eject therefrom Mr. McConnell, in order to put the denouncers into possession. Article 523 of the Fiscal Code provides clearly that within the proceedings of denunciation it is necessary to satisfy the rights of the third improver. Therefore only by treading under foot the rights of Mr. McConnell can he be denied the quality of party in this case, at least so far as his quality as owner of the improvements is concerned, a circumstance which gives to him the character of (proceeding). I mean possessor in good faith, in agreement with the decree of the court of cassation, of the seventh of November, eighteen ninety-four. If he is a party and has not been informed of decrees which affect him, it is clear that these decrees are not definitive, and valid, and that therefore there is no settled matter or suit. If in a court of first instance a judgment should have been rendered without having again notified the defendant after the time a copy of the complaint had been made, would it then be possible to prevent him from exercising his rights of defence? Because the judgment had already been pronounced, without his having been notified or having interpleaded? Such is my case. On the other hand, leaving aside the nullities, and considering the question of the payment for the improvements, it is nonsense to insist that Your Honor could not decide this point because a settled matter was in-

volved. The adjudication made even in the case where it might have the character of *res judicata*, which it has not, might be an obstacle for my continuing the impugnment of said adjudication; but the question on improvements, far from (supposing) I mean, far from questioning the adjudication, presupposes it, and on this point of improvements there has not been rendered any judgment of yours, and still less so any rendered by the chamber of appeals.

This question of improvements is strictly analogous to that of the execution of a judgment.

It is your duty to try and pass on this question; and, since Mr. McConnell is possessor in good faith for the effects of the improvements, he has the "right of retaining in his possession," as per article 328 of the civil code. And when you order him to deliver the plantations without his being indemnified, that which you do is to deprive him illegally. If you are a just judge, and worthy of the name of Carillo, your obligation is to revoke your decision, at least as far as that part is involved.

Basing on what has been expounded above, I petition that you revoke your last decision, that you declare founded the nullity alleged, that you cause proofs to be furnished as to the fact that my client has improvements in the said land, should you doubt this fact, that you order these improvements to be appraised by experts, and that you declare that as long as McConnell is not paid for them the delivery of the land to the denouncers cannot take place. If you fail to concede the total or partial revocation, I at once enter an appeal against the said decision, and indicate my office for any notifications on the trial in the second instance.

San José, April twenty-sixth, nineteen hundred and six.

RICARDO JIMENEZ.

30th April, 1906.

[TRANSLATION.]

*To the Judge of Contencioso Administrativo. (File No. 2904. Denouncement of Government Lands in the jurisdiction of Limon, Talamanea Zone.)*

I, Edgar J. Hitchcock known in these proceedings respectfully state.

I consider, in every sense of the word, that the decision as rendered by you throwing out the last opposition of Mr. McConnell and ordering the

material possession of lands asked for by me as legal and adjusted in accordance with the law. As a consequence I ask that the revocation of such decision as petitioned by the lawyer of Mr. McConnell be declared as without foundation.

In the event that the proposed appeal be accepted by you, I designate the office of the undersigned lawyer as that to receive notifications.

I would also call your attention to the fact that this appeal in accordance with the law should be executed in the sense of being returnable.

San José, April 30th, 1906.

(Signed)      RICARDO PACHECO.      (Signed)      E. J. HITCHCOCK.

10th May, 1906.

First Chamber of Appeals of the Supreme Court of Justice. File No. 2904.  
Denouncement of Government Lands in the Zone of Talamanca, jurisdiction of the District of Limón.

[TRANSLATION.]

I, Edgar J. Hitchcock known in these proceedings respectfully make known. The Judge of Contencioso Administrativo ordered that there should be given to my principal the Northern Railway Company the possession of the lands which were adjudicated to same. The opposing party has appealed against that decision, alleging defeasance which have already been presented and re-presented in these proceedings, as can be verified by a casual examination of the file in question.

The Attorney for Mr. McConnell makes special mention of the Cultivations which his client has on the land, the value of which have not been paid to him. Although Mr. McConnell may have such improvements, the present *status* of the denouncement certainly does not permit of this paralyzing the compliance of judicial decisions thereby opening debate on points which have long since been alleged without having brought forth any proof whatever. This same Chamber has recognized this fact, and declared in its last sentence which appears in the Denouncement file that Mr. McConnell is not a party in this matter, and that he has no right to interfere in the proceedings, and much less now in the compliance of a judicial decision. This Chamber also saw fit to declare that Mr. McConnell had not proven

the existence of his cultivations; and, if this at that time was sufficient reason to disqualify his intervention in this denouncement, it must be more so to-day that the proceedings have been completed by virtue of the execution of and registered title which I now present, the return of which is hereby requested.

The prosecution of a public document such as this executed under all formalities of the law and which credits the unquestionable right of my client to the denounced lands cannot be suspended without accusing such action as being criminally false. Articles Nos. 735 and 736 of the Civil Code. To proceed in any other manner would be to concede a greater respect to the pretensions which have been debated and thrown out, to proceedings which were clearly carried on to impede my client from realizing the right of possession to which it is entitled rather than to an authentic document or to final decisions rendered by this same Court.

If Mr. McConnell has any rights which he wishes to make valid, let him do so in the customary way and manner.

The possession of good faith which he invokes was not accredited in the proceedings of the Denouncement at an opportune time, and cannot, as a consequence, serve as a basis for the pretended right of retention.

The case as described by Article 328 of the Civil Code does not cover the class in question for the reason that Mr. McConnell is not nor has been the possessor of the right to the lands of my principal. The best proof of this that can be brought forward is that during all the time that he has been opposing the Denouncement he has never endeavored to make good his right of possession. He is well aware that the land in question is Government land, and has never even alleged having acquired in any manner as established by the Fiscal Code the right to possess. It is no more than just that he should be paid for the Betterments which he may have, and the Company to whom the lands have been adjudicated does not pretend to enrich itself with same. It is ready to ventilate this question as soon as he may bring same forward in legal form; but this should not give him the right to disturb the possession asked for and which is an inevitable consequence of an executed title. He who denounces can only prevent the party to whom adjudication may be given taking possession {when the cost of surveys may not have been paid to him; and, further, he who alleges to have betterments without having proved the fact lacks all such right. The Civil Code in referring to possession treats as is well known of those who possess in the capacity of proprietors or at least those who have the right to possess or some title which may legitimize such possession; but

he who takes same without being authorized by law, without anybody having transferred to him the right to possess even though it be of a precarious character cannot invoke the guarantees established for such by law. All that the Fiscal Code authorizes and which is sufficient, after legal steps may have been taken, is the right to collect the value of betterments.

In conclusion, the Company which I represent is disposed to discuss this matter of betterments if such be the desire of the opposing party, although it be one now outlawed; but what it does not consent to is the loss of more time in the fulfilment of stanch sentences and to be kept out of the possession which it has asked for, and which is a consequence of the accredited proprietorship by a registered title, and which is the ordinary procedure, legal and current, the coronation and end of denunciations which reach the *status* which the present one enjoys.

In view of the foregoing I pray that this Court confirm the decision of the Judge of Contencioso Administrativo.

San José, May 10th, 1906.

(Signed) E. J. HITCHCOCK.

For the presentation.

(Signed) RICARDO PACHECO.

DECISION of the SUPREME COURT declining to permit the Northern Railway Company to enter into possession of the land occupied by McConnell's cultivations until his rights therein should be settled.

16th May, 1906.

First Chamber of Appeals of the Supreme Court of Justice. San José, at three P.M. of the 16th of May, nineteen hundred and six.

*Re* denunciation of some unappropriated land in the jurisdiction of the District of Limón, effected by Messrs. Carolina Ulloa de Astua & Cons., granted now to the Northern Railway Company and to which Mr. Herbert Lee McConnell Scott opposes himself, being represented by Licentiate Ricardo Jiminez Oreamuno.

WHEREAS Mr. Jiménez Oreamuno appealed from the decision handed down by the Court of Contencioso Administrativo matters of the republic at eight fifteen A.M. of the twenty-third of April last, wherein the objection of nullity advanced by Mr. McConnell for being extemporaneous and there-

fore inadmissible in these proceedings was declared *sine causa*, and whereby it was ordered that material possession be given of the land adjudicated, to the interested company, for which purpose the court instructed the civil judge of the district of Limon to whom for the purpose indicated the papers in the case were sent, and whereas this appeal was allowed, and considering that

I. The decision appealed from, dated twenty-third of April last, 8.15 A.M., in so far as it declares without cause the nullity of the proceedings as alleged by McConnell, because of the non-notification of him of the decisions made in the course of said proceedings, is found to have been made according to law and should be confirmed because of its having been declared by a majority of this court (confer page sixty-seven) that the opposition to the denunciation as formulated by Mr. McConnell is without cause and that the matter, in spite of said opposition, should be continued and carried into effect, with the permission given thereto in the same decision, and considering

II. As far as the fact is concerned that the decision appealed against orders that the company to whom the land has been adjudicated be put into possession of the real estate, it should be revoked, an objection having been presented by Mr. McConnell demanding a declaration acknowledging that he has improvements existing on the land in question, and that these should be paid to him before he can be dispossessed therefrom, as he possesses the right of retention. This point is to be settled, first, in the same proceedings, because if the assertions of the said gentleman should really be justified, it would not be legal to deprive him already now of the possession.

Therefore the decision appealed from shall be *confirmed* as far as the same declares without cause the nullity to which it refers, and shall be *revoked* in that part which orders that the adjudicatory company be put into possession of the land, which part for the time being is declared to be void, because it is necessary that first the question of improvement and the right of retention invoked by Mr. McConnell be settled.

ALBERTO BRENES.

BENITO SERRANO.

LUIS DAVILA.

MANUEL SAENZ C., *Secretario.*

NOTE.—Justice Alberto Brenes saved his vote in the present matter as follows: He accepts the "whereas" considering that in a decision rendered by this chamber dictated at three forty-five P.M. of the fifth of October of last year, as can be seen on page 75 of the records, the petitions and oppositions of Mr. McConnell were denied and that the government has issued already title of possession in favor of the denouncing parties or their assigns, the taking of possession cannot nor should it be impeded, such taking possession being claimed by the owners of the land adjudicated.

THEREFORE, he votes that the confirmation of the decision appealed against be made to cover all parts thereof.

ALBERTO BRENES.

MANUEL SAENZ C., *Secretary.*

27th July, 1906.

*To the Judge of Contencioso Administrativo (Denouncement of Dona Carolina Lizano de Astua and others):*

I, Ricardo Jiménez, legally appointed agent of Mr. McConnell, beg to submit to your [honor.]

To justify [ascertain] the cultivations and other improvements and their value, I move the following proofs by witnesses, experts and by local inspection:—

### I.

I petition that the justice repairing officially to the places where said plantations, buildings, etc., are, visit the land, convince himself of the existence of the improvements as well as of the size of the cultivations and cause an official protocol to be made thereof.

### II.

I petition that the witnesses which I shall present at the time of inspection of the places depose whether it is true that all the cultivations and improvements have been made for the account and at the order of the said my mandator who was and is in public and peaceful possession of all said improvements.

## III.

I petition that experts estimate most carefully the plantations, buildings and other improvements that there are.

San José, 27th of July, 1906.

(Signed) RICARDO JIMENEZ.

9th Nov., 1906.

Court of Contencioso Administrativo of the Republic. San José, on the ninth of November, nineteen hundred and six, 9 A.M.

WHEREAS:

Licentiate Ricardo Jimenez, authorized representative of Mr. Herbert Lee McConnell, submitted on the twenty-third of August last amongst other things to this court, that his mandator has transferred the ownership of the plantations and improvements to which these files refer, as well as all his rights referring thereto, to the concern "*The American Banana Company*" of the City of Mobile; that he makes this declaration in compliance with instructions received by Mr. McConnell, and that he withdraws from the intervention which as an authorized agent of the said gentleman he had had in the present case.

2. WHEREAS Mr. Edgar Hitchcock, representing the *Northern Railway Company* basing on the foregoing declaration, insists that, owing to this desistment which he accepts, there remains no longer any cause which might retard the material possession of the land adjudged (to it) and petitions that it be ordered that said possession should be granted to the company, his mandator.

3. WHEREAS this court by an order of the twenty-third of April last, at 8.15 A.M., decreed that material possession be given to the concern *The Northern Railway Company*, the first Chamber of Appeals revoking, however, this order by a resolution of the seventeenth of May, 3 P.M., of this year, being of the opinion that, inasmuch as Mr. McConnell had entered an objection demanding payment of improvements made on said land, before being dispossessed thereof on the ground that he enjoyed the right of *retention*, this point should be first settled, because, if the allegations of the objecting party should really prove to be well founded, it would be an illegal act to deprive him now of the possession; and

4. WHEREAS a hearing was fixed for the other parties in this case regarding the petition of Mr. Hitecock, of which Mr. McConnell or Mr. Jimenez did not avail themselves, while the District Attorney sided with the petition for possession.

Considering

1. That Mr. McConnell, through his authorized agent, has not opposed himself by claiming his rights, having, aside from objecting once more that the Courts of Costa Rica had no jurisdiction to pass on acts done in the territorial district where his improvements are, manifested that he has transferred to the *American Banana Company* all the rights that come to him because of them (improvements).

2. That when now granting material possession of the land in which said improvements are, the payment of which is under discussion, said material possession having been petitioned for by the representative of the Northern Railway Company, such a decision would conflict with the resolution of the First Chamber of Appeals to which the third WHEREAS refers.

NOW, THEREFORE,

The party claiming the improvements is declared in default.

It is declared that at the present moment the granting possession is not declared feasible of the material possession as demanded by the representative of the Company to which the land has been adjudged, until after the proceedings indicated by the Supreme Court have come to a close.

(Signed) CIPRIANO SOTO.

(Signed) ALEJANDRO JIMENEZ CARRILLO

DECISION of the SUPREME COURT ordering possession of the lands containing McConnell's cultivations in Costa Rica to be given to the Northern Railway Company.

First Chamber of Appeals of the First Supreme Court of Justice : San José, at nine A.M. of the third of December nineteen hundred and six. In the files of denouncement of some unappropriated land in the jurisdiction of the Canton of Limón, made by Carolina Lizano Ulloa and companions, now transferred to the Northern Railway Company, and to which Mr. Herbert McConnell Scott opposed himself, represented by Licenciate Ricardo Jimenez Orearnuno, this being a matter under the jurisdiction (competence) of the Judge of *Contencioso Administrativo* of the Republic:

WHEREAS Mr. John M. Keith, authorized agent of the said company, appealed from the resolution handed down at nine A.M. of the 9th of November last, whereby the party claiming the improvements was declared in default, and whereby it was declared that it was not feasible to give at that time the material possession demanded by the representative of the company to which said lands had been adjudged, and that it was necessary that the proceedings indicated by the Superior Court should first have come to an end;

WHEREAS, as long as Mr. McConnell (H. L. MacConnell), who has claimed the payment for the improvements made on the lands adjudged to the Northern Railway Company, has withdrawn from the present case, declaring that he has transferred all his rights thereto to a foreign company, and that he fails to recognize the jurisdiction of Costa Rica as regards the tracts denounced, the former resolution of this chamber cannot any longer be carried out because the claimant has withdrawn from the case by virtue of his withdrawal—and as one must necessarily consider such withdrawal as the abandonment of his claim—said withdrawal having been accepted by the opponent party, it therefore being proper that possession be given to the owners of said tracts as the direct consequence of the ownership,—

THEREFORE, and in compliance with the articles of the Civil Code, numbers 264–277, 410, and 411 of the Code of Civil Proceedings, the decision appealed against is herewith revoked, and it is ordered that the material possession be accomplished as prescribed here, without prejudice to the rights of third parties which Mr. McConnell or any other person or corporation which represents him or may be cessionary of his rights may have concerning the cultivations and other improvements; and the authority that puts into possession the Northern Railway Company shall de-

scribe in detail the condition of the property in general, its cultivations and buildings that may exist thereon, and with all the other details that said authority may consider proper for defining the rights of any improver which might be shown hereafter. The Secretary of the Treasury shall be given duly indorsed the check presented by the company to whom the property has been adjudged, for the purpose of challenging "sine causa" Judge Davila.

ALBERTO BRENES, BENITO SERRANO, MARCELO BRENES, MANUEL SAENZ C., *Secretary.*

NOTE.—Mr. Justice Benito Serrano dissented.

ORDER of the COURT of CONTENCIOSO ADMINISTRATIVO to the Governor of Limon directing him to give possession of the said lands, through the instrumentality of the Police Service, to the Northern Railway Company.

CIPRIANO SOTO, judge of *Contencioso Administrativo* of the Republic of Costa Rica, respectfully informs the Governor of the Canton of Limon that in the file of denunciation of an unappropriated tract situate in the same canton there occurs the following resolution which textually says as follows: "Court of *Contencioso Administrativo* of the Republic. San José, at nine A.M. of the fifth of December nineteen hundred and six; to be carried into effect; give to the Northern Railway Company the material possession it petitions for, of the land adjudged to it, through the Police Authority of the District of Limon in compliance with article 741-742 and 1039 of the Code of Civil Procedure. And therefore letters requisitorial as demanded in law to the Governor of the said Canton in order that he himself, or some official of the police that he may designate for the purpose, proceed to carry into effect that which has been ordered, with the understanding that in the act of possession there shall be described in detail the condition of the property in general, the cultivations and buildings that may exist thereon, and other details that he may consider suitable for determining the rights of any improver that might be deduced later on; but before that the adjudicatory company shall furnish the surety of 200 colones to which the previous promemoria refers"; therefore and whereas the said surety has already been furnished, I request your excellency that you cause the said decision as here inserted to be carried into effect, giving possession thereof as demanded, pursuant to the title-grant and plan of the lands in question which I beg to send to you together with the present letter. Given at San José at one forty-one P.M. of the fifth of December nineteen hundred and six, CIPRIANO SOTO, ALEJANDRO JIMENEZ CARRILLO.

ORDER from the GOVERNOR of LIMON to the CHIEF OF POLICE  
of LIMON.

Office of the Governor of the Canton: Limon, at twelve (noon) of the seventh of December nineteen hundred and six; to be carried into effect; for this purpose I commission the chief of police of this city to whom title-grant and plan received shall be delivered with these letters requisitorial. FRANCISCO SABORIO; F. GOLCHER.

Office of the Chief of Police at two P.M. of December seventh nineteen hundred and six: To be carried into effect; the undersigned will repair to the land referred to on the accompanying letters requisitorial for the purpose of putting into possession the Northern Railway Company, of such lands; for this purpose the 11, 12, 13th and 14th of the present months are designated. FILADELFO GRANADOS; P. P. BOZA, NAP. SEQUEINARA.

On the 11th, 12th, and 13th of December, the Chief of Police of Limon, with proper assistants and an engineer, proceeded to the Sixola River and duly and legally carried out the foregoing decrees of the Supreme Court and of the Court of *Contencioso Administrativo*, and the order of the Governor of Limon, and formally placed the Northern Railway Company in full and actual possession of all the lands north of the Sixola River, included in the Astua denunciations, on which cultivations of McConnell lie.

## CHAPTER 8.

Showing the efforts of McConnell in Panama in 1906 to procure action of the government of Panama to take away from Costa Rica the jurisdiction of the disputed territory north of the Sixola River, and the action of the National Assembly of Panama rejecting his interference.

HERBERT L. McCONNELL..

SOVEREIGNTY OF PANAMA AND THE REGION OF THE  
SIXAOLA.

QUESTION OF PATRIOTIC INTEREST.

*Promemoria Addressed to the National Assembly.*

DRAFT OF PROPOSED LAW

(whereby the National Sovereignty is extended beyond the Sixaola River).

*The National Assembly decrees:*

ARTICLE THE FIRST. The Executive shall at once proceed to take actual possession of the land situated to the north of the Sixaola from the mouth of said river as far as Cinocere, near Cuabre, and from there to the Cabo Mona on the Atlantic Ocean, which according to the Constitution forms a part of the national territory.

The government is authorized to conclude a contract for the construction of a pier at the point of the coast known as Gandocean.

ARTICLE THE SECOND. The present shall be in force from the moment of its being sanctioned.

Given in Panama.....

*Mr. President of the National Assembly, Honorable Deputies:*

I the undersigned, Herbert L. McConnell, a citizen of the United States of North America, temporarily in this capital, submit the following, as may seem best, in my own name:—

Some time after the promulgation on the part of the President of the French Republic of the arbitration decision which put an end to the boundary controversy between Colombia and Costa Rica, and pursuant to the fact that the said decision adjudged definitely to the former the so-called Sixaola and Talamanca Valleys, I occupied, in the character as explorer and colonist, under the protection of the Colombian laws (61 of 1874 and 48 of 1882), the region through which flows the river of the same name from the place where it flows into the sea to a site called *Cinocere*, about three miles below Cuabre.

In the first days of the month of April, 1903, I began the work, and in June 1904, I sold the rural property to a company called The American Banana Company. The latter carried out important improvements, but it has not been able to derive from the enterprise the profit which justly could be expected, because of the obstacles with which I shall entertain you further on. The plantations now extend themselves over a surface of about three thousand five hundred (3,500) manzanas to the right and left of the river, and have a productive capacity of more than one hundred thousand (100,000) bunches per month. The cash capital invested in this immense undertaking amounts in all to about \$300,000 American gold.

I content myself with submitting to you these data of a general character without accompanying same by proofs which would show the truth of my statements, for I am not speaking to you in the name of private interests with an object of soliciting for them guarantees and protection which not you, but the Executive Branch of the State Power is called upon to concede, pursuant to the laws.

My present desire is directed towards submitting to your consideration, as depositaries that you are for the sovereignty of the Republic, a question of an eminently national character bearing on the Sixaola region,—a question which for the very fact that it bears on that zone of the territory of your country affects directly the banana interests rooted there. This explains my presence before you.

As has already been stated, the banana plantations extend from the mouth of Sixaola River, stream upward, to the right and left, as far as Cinocere, near Cuabre; but, inasmuch, as that river in certain epochs of the year, in which it becomes torrential, does not offer any secure entrance to the vessels, I had to select at the coast a point which, connected by a tramway with the plantations, would serve as port for said vessels. The point selected for that purpose is called *Gandocan*, being a place situated between the Sixaola River and the Punta Mona, scarcely known prior to

the date to which I allude, and which I turned into a settlement, constructing there at my expense sheds for materials and dwelling-houses for the laborers.

While matters were in that condition, it occurred that in the month of July, 1904, Costa-Rican soldiers or armed guards invaded suddenly the region of the Sixaola, occupied the plantations on the left bank of this river, and likewise the houses and sheds at Gandocan, suspending the work on the railroad or tramway in construction, and impeded, and have impeded up to the present time, the importation, at those places of provisions and the exportation of fruit. And, not satisfied with these acts of manifest usurpation, they laid, moreover, an embargo on two-thirds of a shipment of construction material consigned to me, and which had been passed through the custom-house at Bocas del Toro, pursuant to the laws, per the inspector of that port, Mr. Carlos Clement.

Torn away by force, without legal formulas of any kind, from the enjoyment of those rights created by means of titanic efforts and a large investment of capital, I have since then wandered from place to place, trying to bring about, by all means imaginable, the reinstatement into the territory of the Republic of Panama of the Sixaola Valley, which is yours, honorable deputies, over which you had exercised jurisdiction without protest from Costa Rica, and which the latter country has occupied since July, 1904, without more right than that of usurpation, and the possession of which you recover never, or but very slowly, if you submit the question thereof to the good will of the neighboring republic.

I myself, although a foreigner, I have an interest, or I ought to have said an urgent necessity, in that that reinstatement take place. The rights of ownership and possession of the lands covered by the plantations of the Sixaola were acquired under the laws of Colombia, in force since then in the Republic of Panama, and therefore under the light of these laws and before the courts of justice of Panama these rights should be sustained and ventilated against any one that dares to dispute them.

Therefore, the object of the representation I make before is to call forth the adoption of a law which should approximately comprise the following points:—

*The National Assembly decrees:*

ARTICLE THE FIRST. The Executive shall at once proceed to take actual possession of the land situated to the north of the Sixaola from the mouth of said river as far as Cinocere, near Cuabre, and from there to the Cabo

Mona on the Atlantic Ocean, which according to the Constitution forms a part of the national territory.

The government is authorized to conclude a contract for the construction of a pier at the point of the coast known as Gandocean.

ARTICLE THE SECOND. The present shall be in force from the moment of its being sanctioned.

Given.....

This law is rendered highly necessary because of its appropriateness, the pressing necessity of this measure, and, moreover, incontestable reasons which I propose to point out to you briefly, all the more so as to some of you they are already known.

These reasons are the following:—

- (1) That the region to which I am referring is an integrant part of the Republic of Panama;
- (2) That over it the authorities of Panama have exercised jurisdiction without protest on the part of Costa Rica; and
- (3) That the Republic of Costa Rica occupies this region since July, 1904, without any other title than that of usurpation.

I shall expound each of these important reasons separately:—

### I.

That the region of the Sixaola, in the triangle comprised by the mouth of the river of that name, the place called Cinocere and Punta Mona (which is the part that solely concerns me) lies within the territory of the Republic of Panama, is a matter which you, Costa Rica, and the whole civilized world know and recognize.

The almost centenarian boundary question between Colombia and Costa Rica was happily terminated by the arbitration decision, promulgated on the 11th of September, 1900, by the President of the French Republic. This decision, pursuant to the tenor of the treaty of arbitration concluded between the parties in San José de Costa Rica on the 25th of December, 1880, and ratified by that of Paris of the 20th of January, 1886, and the one at Bogota on the 4th of November, 1896, is, according to the text thereof, . . . "a treaty concluded, perfect, obligatory, and irrevocable between the high contracting parties which formally and expressly renounce

any and all claims of any kind against the arbitration decision, and oblige themselves to accept and fulfil it promptly, faithfully, and forever, pledging therefor the nations' honor."

In these solemn expressions is contained the acceptance in advance of the decision on the part of Costa Rica and Colombia,—an acceptance which, for greater security and guarantee, has for guardian and custodian the national honor of the two Republics.

The secession of Panama from the mother country transferred to the entity which arose from said movement, amongst others, the territorial rights acquired by the latter. Concerning this Ball says in his Treaty on International Law (5th edition, page 92):—

"The right possessed within the territory that has separated itself, those acquired by treaties bearing on boundaries and by means of jurisdictional cessions, the obligation contracted, concerning said territory, and the property within its limits, which in itself has a local character, . . . are transferred to the new state."

Therefore, the arbitration decision of the 11th of September, 1900, is the perfect title when Panama derives its right of ownership and dominion to the triangle already described to the North of the Sixaola. Who does not remember at once the short but precise terms of that pre-eminent authority? He said,—

. . . "The frontier between the Republics of Colombia and Costa Rica shall be formed by the counterfort of the Cordillera (mountain chain) which *starts* at the Cabo Mona, on the Atlantic Ocean, and closes in to the North the valley of the Tarire River on the Sixaola River."

Scarcely had the decision been communicated to the nations interested therein, being published in the *Official Gazette* of the French Republic of September 15, 1900, both Costa Rica as well as Colombia were to have abandoned speedily and at once the jurisdiction which they formerly exercised over territory which by virtue of the decision had been adjudged to one or the other. Colombia should, therefore, have abandoned to Costa Rica the cocoa forests of Burica, Coto, and Pavon which the District of Solia used to lease to private parties every year, and Costa Rica to Colombia the large territory to the East of the mountain chain indicated in said decision as the natural frontier towards the Northwest between the two countries.

If that did not happen, that is to say if one or the other of the two nations remained knowingly on territory no longer belonging to it, with the toler-

ance or silent consent of the neighboring government, so was this doubtlessly not due to the wrong belief that the former condition of matters—that is to say, preceding the decision of the arbitrator—still continued, but rather it was due to negligence only too often to be found with those who are sure of their rights.

A decision affecting *nations*, like a judgment of a definite character on private interests, puts an end to all controversies. By the decision of the President of the French Republic the territory of the dispute was divided up, and each nation remained integrate, with the property, or rather with that part of the property, that now belongs to it. The situations preceding the arbitration decision, any provisional boundaries that had been or might have been established, that which in the case of Colombia and Costa Rica has improperly and falsely been called the *statu quo*, all that evaporated, was wiped out, disappeared, when the arbitration decision was pronounced and promulgated.

Gravely, indeed, err those who assume that a decision does not bring about any effects as long as the parties do not come to an agreement as to the manner in which the same is to be executed, or that it remains a dead letter until a new treaty gives it new life, in which treaty the bases of its fulfilment are settled. If that were so, international arbitration would only remain an empty recourse. It then would suffice that the less favored nation in an arbitration decision should elude, by means of pretexts and subterfuges, the carrying out thereof, to prolong in this manner for an indefinite period the same condition of matters which by the recourse of the arbitration had been intended to be brought to an end.

Moreover, for Colombia and Costa Rica the decision acquired by mutual agreement of the parties the character of a "treaty concluded and perfect," and that means that the execution thereof is a foregone conclusion as soon as the decision is rendered and the parties have been notified thereof. The treaties are fulfilled from the moment in which they acquire legal existence.

There is still more to be said: Strictly speaking, a decision like the one rendered by the President of the French Republic, *does not* require demarcation of the frontier line by commissions appointed by the neighboring States. Natural frontiers like the ones which separate them, as in this case according to the bounding effected by the arbitration decision, need not a material demarcation on the land itself.

In his treaty, Codified International Law, Spanish edition of 1891, page , Fiore says as follows:—

"The conventional boundaries are those established according to lines of demarcation fixed by treaties, distinguishing themselves by visible signs placed between the frontier of the state and those of the limitrophe states."

These visible signs are usually rivers or mountains, because it is, in fact, the duty of arbitrators on boundary questions to consider the natural boundaries when tracing the actual ones of each State.

The tracing of the decision promulgated on the 11th of September, 1900, was fixed on the side of the Atlantic Ocean by signs of *mountains*, and therefore subject to that rule of Bluntschli which reads,—

"When the countries are separated by a mountain range, it is admitted, in case of doubt, that the frontier is formed by the crest or the dividing line of the waters."

Panama understood matters in the manner here expounded from the very first moment of its separation from Colombia, and reassumed, therefore, the boundaries indicated in the decision as the proper and definite ones of the new State.

Decree 18 of the 16th of November, 1903, *Official Gazette* No. 2, of the 20th of November, 1903, issued by the Provisional Government, created the province of Bocas del Toro, and indicated for it as frontiers on the Northwest "the dividing line of this republic with that of Costa Rica, according to the arbitration decision of the President of the French Republic," and for the district of Bocas del Toro the territory which lies to the North of the Sixaola River up to Cabo Mona, Loma Bonita, and Rio de Occidente.

By means of this important act of the Provisional Government of Panama there were adopted the boundaries of the arbitration decision, and they were copied in the public right (law?) of the new State. Panama appreciated the decision according to its true value, that is to say as a just title will say perfect title of property over the region of the Sixaola as far as Punta Mona, and extended, therefore, over it its sovereign jurisdiction. Therefore the governors and other authorities of Bocas del Toro were to exercise, and exercised in fact from then onward until the month of July, 1904, command and jurisdiction there. On the date last named Costa Rica started to occupy *manu militari* the said territory, and it thus failed to recognize the sovereignty of *Panama*. Nevertheless, the Decree of the Provisional Government which created the Province of Bocas del Toro is still in force as law of the republic.

At that time the country had already been organized, and had been given a constitution, a faithful transcript of the permanent will of the nation, and also here was designated as belonging to Panama

... "the territory, both insular and continental, which was adjudicated to the Republic of Colombia by virtue of the arbitration decision promulgated on the 11th of September, 1900, by the president of the French Republic."

In this manner the reign and jurisdiction of a country are extended as far as its boundaries reach, and thus the constitution has conveyed to the Republic of Panama command and jurisdiction of the region of the Sixaola, which is an integrant part of the national territory.

Fiore states and affirms that—

"the territory, with all that it contains, must be considered as the base and limit of the reign and the real jurisdiction of each sovereign."

From the point of view of its fundamental law, Panama is, therefore, in possession by right and fact, or, as the jurists say, *de jure et de facto*, of the triangle of national territory which reaches from the mouth of the Sixaola River as far as Cimocere, near Cuabre, and from there to the Cabo Mona.

That fact that Costa Rica has occupied that region, and that this occupation has been tolerated and assented to contrary to the express text of the constitution, is a thing which it is not my business to examine. My object is to demonstrate that you are the masters with perfect title of the Sixaola, Gandoan, and Punta Mona, and that the constitution and the laws which you yourselves have given for your own government have extended over that region the national reign and the national jurisdiction.

## II.

In civil law a title deed duly recorded is a full proof of possession. "In the law of nations," says Carlos Calvo, "the use *in re* carries with it always and in every case the use *ad rem*" (International Law, ed. of 1868, page ).

Panama, as mistress of Sixaola, covers with her sovereignty that territory, and the authorities of Boecas del Toro are those which are in charge of carrying into practice the attributes of sovereignty, to wit, the reign and jurisdiction.

Of two acts of actual jurisdiction exercised by authorities of Panama within the territory to which I refer, I possess two positive proofs. One of these acts is that of the port inspector of Bocas del Toro, and the other that of the treasury agent of the same province,

In the archives of the public offices there must be evidence of many other analogous acts, because it is a fact not doubted by any one that the Prefect of Bocas del Toro governed the province in all its extension, from the time when it was created up to July, 1904.

The same must be said of the Inspector of the Port. This official possessed legal existence under the republic by virtue of Decree 17 of the 19th of November, 1903 (*Official Gazette* No. 3, issued by the Provisional Government). It seems appropriate to copy here article 12 of the said Decree, which reads as follows:—

**“ARTICLE 12.** There shall be a national custom-house officer in every one of the cities of Panama, Colon, and *Bocas del Toro*, with jurisdiction within the respective provinces, under whose charge there shall be the surveillance of national income and the maritime policing of the respective ports.”

The chief of the guard exercised the jurisdiction conferred here in the whole province of Bocas del Toro, when there arrived at this port, bound from the United States, the steamship “Orn,” carrying particularly materials for railroads destined for the region of Sixaola. After the authorities had been informed as to the nature of the cargo, Mr. Otto F. Dolder, my agent at Bocas del Toro, sent the following communication to the inspector of the port:—

*To the Chief of the Custom-house Guard, City:*

Please issue permission that the Norwegian steamer “Orn” under command of Captain Movinkel, from Baltimore, consigned to Otto F. Dolder, for the place of Gandoan, Sixaola, may weigh anchor.  
Bocas del Toro, 22nd July, 1904.

OTTO F. DOLDER,  
p. Graboweki.

At the bottom of this request there appeared the following decision:—

“May weigh anchor. (Signed) The chief of the custom-house guard,  
C. Clement.”

In corroboration of the preceding, and in order to show that this “May weigh anchor” was conceded in full appreciation and knowledge of the

fact that Gandoan is national territory, the following certificate should be read:—

The undersigned, chief of the National Custom-house Guard, at Bocas del Toro, after examining the promemoria presented by Mr. O. F. Dolder to this office, certifies:

I.

That it is a fact that the office under his charge sent on board of the steamer "Orn" three officials for the purpose of being present at the unloading to be effected by said steamer in the port of Gandoan during the last days of the month of July of last year, and to record the loading of the same.

II.

That the names of the three officials and their rank in the office is as follows: Julian E. Mier, sergeant of the guard; Rogelio Quintero, guard; and Manuel Antunez, guard.

(Signed) C. CLEMENT.

The other act of actual jurisdiction to which I have referred was executed by the treasury agent of the province of Bocas del Toro, and consists in that the said official collected import duties or commercial taxes on the cargo of the "Orn," made up of railroad material, destined for Gandoan in the district of Sixaola. The collection effected by the administration (treasury agency) amounted to \$10,000 Colombian currency, for which the office at Bocas del Toro has paid itself in excess, selling in public auction property belonging to the undertaking, particularly a gasoline launch called "Sixaola."

Although I am of the opinion that the railroad material carried on board the "Orn" was not then, and is not now, subject to the payment of the commercial duty, I have, nevertheless, cited the case as a positive example of actual possession which does not leave any room for uncertainty.

The following certificate issued by the treasury agent at Bocas del Toro explains the matter more fully. It follows herewith:—

The undersigned provincial treasury agent, pursuant to the preceding promemoria and the documents on file in his office, certifies:  
*Firstly.* That it is a fact that in this office there was intended and

is pending a bill for writ of execution to collect from the American Banana Company the import duties on a cargo of railroad material, which arrived in the steamer "Orn" at the end of July, nineteen hundred and four.

*Second.* The articles imported in the steamer "Orn" were rails, ears, and utensils for tracks, subject at that time to the payment of import duties, because here the law 88 of nineteen hundred and four had not become operative.

*Third.* From the files it does not become evident where the cargo of the "Orn" was discharged.

*Fourth.* It is a fact that the import duties were liquidated in agreement with the declaration of Mr. O. F. Dolder, as legal attorney of H. L. McConnell, in a promemoria of the 24th of July, nineteen hundred and four, which declared that per steamer "Orn" thirty-three thousand four hundred and thirty-six packages had arrived. In July of the said year the said duties amounted to ten thousand one hundred and forty-nine dollars and ninety cents.

(At the present time the Republic of Panama loses because of the importations by way of Gandocan and the exportation of bananas a considerable amount of income, which otherwise—that is, by the reincorporation of the said territory—would flow into the public treasury. The amount that thus does not flow into the national treasury amounts to hundreds of thousands of dollars, owing to the indifference with which up to the present time those important interests have been overlooked.)

*Fifth.* It is true that for the payment of the sum referred to my predecessor attached, stored and appraised three thousand four hundred and twenty-three rails.

*Sixth.* The property of the American Banana Company attached, stored appraised and sold by the undersigned in the suit referred to above, and pursuant to the rules laid down in articles 1079 of the judicial code and 1085 of the law 105, was the gasoline launch called "Sixaola."

*Seventh.* The sale of the gasoline launch "Sixaola" produced two thousand three hundred balboas.

*Eighth.* On the 16th of May, nineteen hundred and six, there were adjudged in public sale to Messrs. Surgeon and Company one hundred rails for seventy balboas, which amount was turned into the treasury of this office. On the 6th of June last, three thousand three hundred and twenty-three rails remaining to Mr. J. W. Barranco, for three thousand five hundred and fourteen balboas, five cents, a sum which has not been collected as yet, because it is made dependent upon some drafts drawn by Barranco on the United States.

*Ninth.* On this point no certificate can be issued as yet, because the final liquidation has not been as yet effected.

*Tenth.* The only rails delivered have been the one hundred, making up the lot sold to Surgeon and Company. Those adjudged to Barranco are stored until the drafts referred to above have been converted into cash.

Given at Bocas del Toro on the tenth of July, nineteen hundred and six.

### III.

Coming now to the third point, which is to the examination of the occupation on the part of Costa Rica since July, 1904, of the land where the plantations and works of the undertaking are, on the left bank of the Sixaola, I would state that this occupancy is due, according to all appearances, to a matter which is said to have existed between Colombia and Costa Rica prior to the promulgation of the arbitration decision, under the name of "*statu quo*," or provisional frontier between the two countries.

Concerning this matter there has been prevalent a mistake which it is high time to clear up. Neither has the *statu quo* invoked by Costa Rica existed at any time as a formal agreement between her and Colombia, nor can it be maintained that it survives and subsists as provisional frontier after the promulgation of the arbitration decision which fixed and determined the definite boundary.

In his work "Frontiers between Colombia and Costa Rica," Mr. Francisco de P. Borda asserts that that which has been called jurisdictional *statu quo* of the two nations is nothing else but the sanctioning of the *uti possidetis* of 1810, defined in the treaty concluded in 1825 between Colombia and the United Provinces of Central America.

Article VII. of this famous treaty reads as follows:—

"ARTICLE 7. The Republic of Colombia and the United Provinces of Central America bind and oblige themselves formally to respect their frontiers *as they are at the present time*, reserving the privilege of effecting amicably through a special convention the demarcation of the dividing line of either state."

This *statu quo* or *uti possidetis* of 1810 threw the frontiers of Costa Rica not only beyond the Sixaola and the Tarire Valley, but deprived her also of a part of the coast on the Caribbean Sea.

Since that time there has been no other treaty. The work cited states so clearly in the following paragraph:—

“Since 1825 up to the present time, if we except the arbitration treaty, there has not been concluded definitely any treaty, pact, or agreement with any of the republics of Central America. The treaties signed by the ministers of Colombia and Costa Rica have been disallowed by the respective congresses. If any innovation had been made in the *statu quo* before 1884, during the constitution of eighteen sixty-three, without the assent of the congress, it would be essentially void.”

In the treaty of arbitration concluded December, 1880, in San José by the Colombian plenipotentiary José María Quijano Otero and the minister of Costa Rica, José María Castro, the following can be read in Article VII.:—

... “is agreed and here formally stipulated that the question of boundaries and the designation of a dividing line between the adjoining territories of Colombia and Costa Rica shall never be decided by any other means except the civilized and humanitarian means of arbitration, the *statu quo* agreed on being preserved in the meanwhile.”

Referring to this unexpected revelation of the existence of a secret agreement concerning the *statu quo*, Mr. Borda says that such a thing done without the approval of the Congress is essentially void. One really cannot know what can be the *statu quo* agreed on if it is not that of 1825 or the *uti possidetis* of 1810.

It is certain that in the diplomatic archives of Colombia there appears a note issued from the Secretary of Foreign Relations, dated the 20th of April, 1880, which says:—

“For the effect of the *statu quo*, according to which both republics have agreed not to change it, as long as the arbitration decision has not taken place, my government sustains and protests that the boundary of the two republics, during the time that their questions on boundaries remain pending, are the following:—

“On the side of the Atlantic, the principal bed of the Culebras River, to its source, following a line over the Cruces mountain crest as far as the mouth of the Golfito River in the Golfo Dulce in the Pacific. This government considers any act of jurisdiction on the part of Costa Rica on this side of these boundaries as an act of usurpation. . . . (Signed) Luis Castro Rico.”

Immediately the Costa Rican minister replied to the note of the Colombian minister, indicating that which Costa Rica considered as the line of the *statu quo*. I quote herewith the pertinent part of the said reply on the 10th of June, 1880:—

“I cannot admit that the occupation of Bocas del Toro effected by Colombia and tolerated by Central America can have altered what in legal language should be called ‘the state of things.’ My government maintains and protests—not by facts, but by reasons of justice which are incontestable—that the line of the *statu quo* is that which starts from Punta Burica, runs straight to Escudo de Veraguas, and that any act of jurisdiction exercised by Colombia this side of those boundaries must be considered as an act of usurpation. . . . (Signed) José María Castro.”

It can easily be understood, in view of these differing opinions which were never brought to a voluntary agreement, that between Colombia and Costa Rica there had never been any real *statu quo* except that of 1825, that the line indicated by the Colombian secretary, Luis Carlos Rico, in his note of the 20th of April, 1880, as it had not been accepted by Costa Rica, obliged neither this country nor Colombia, even if we concede, and by doing so we concede a great deal, that an agreement of this kind were at all valid, and that, therefore, any occupation on the part of Costa Rica of territory east of the line of the *uti possidetis* of 1810 has necessarily had the character of invasion, and any jurisdiction which in virtue thereof it may have exercised over the said territory has been usurped.

The line, which by the by is indefinite, indicated by Minister Rico as provisional boundary between Colombia and Costa Rica, goes along the principal river-bed of the Culebra River (also called “Doraces”), which, according to the official map of Manuel Ponce de Leon, 1864, which must have been the one which served as a guide for the Colombian chancery, flows into the ocean many miles north of the Cabo Mona, leaving, therefore, on this side the region of Gandocan and the entire valley of the Sixaola. In spite of all this, and in case you should not have fixed your attention thereon, I would like you to remember that, according to the terms of the note, that line was to subsist only *while the arbitration decision had not been brought about*.

This arbitration decision which was to have been rendered by His Majesty the King of Spain, and which, as the terms stipulated for it had expired, and as a new arbitration treaty had been made between Colombia and Costa Rica on the 4th of November, 1896, which fell to the President of

the French Republic, Emile Loubet, to render, was finally promulgated on the 11th of September, 1900.

The arbitration decision was communicated to the interested parties on the 15th of September of the same year, so that *de facto* and in virtue thereof that capricious and arbitrary *status quo* ceased which had been fixed by Mr. Rico and not accepted by Minister Castro. Since that time the definite frontier took by right the place of any other line or provisional frontier.

It only remained to take material possession of the territory adjudged by the decision, an intention communicated by Colombia to Costa Rica through its envoy extraordinary and minister plenipotentiary to the governments of Mexico and Central America, Mr. Lorenzo Marroquin.

In a memorandum addressed by this diplomat to Mr. Justo R. Facio, Minister of Foreign Relations of Costa Rica, on the 27th of February, 1901, the following appears:—

“Moreover, the Colombian government believes to be under the obligation to look after the territories which that decision, meaning the French arbitration decision, recognizes as a part of its domain, establishing custom-houses and guards, founding military and agricultural colonies, starting the service of missions, providing for the political and judicial administration, and using such means as may bring about the development of welfare, growth, and progress of the parts demarcated. Thus leaving aside other reasons with which I do not wish to fatigue your excellency, the government of Colombia will send about the middle of September of the present year a commission to take possession of the territory which has been adjudged to it, according to the decision, and to deliver unto Costa Rica that which belongs to the latter. The natural boundaries indicated by the arbitrator render this act easy and feasible.”

Although the taking possession announced for the middle of September, 1901, could not take place because of the war that broke out at that time in Colombia, the notification transmitted to Costa Rica remained standing, to become operative at any time.

#### CONCLUSION.

On the 14th of September, 1904, the Secretary of Public Works rendered the following resolution, number 33, reading literally:—

“Therefore the government resolves:—

“The Secretary of State and Foreign Relations is to be requested

to address a request to the government of Costa Rica, that provisionally and until the exact boundaries are settled between the two republics no obstacle be laid in the way of Mr. H. L. McConnell by the authorities of the government of Costa Rica, in the work which he is undertaking in the place called Gandoan. Record and notify. For the President of the Republic, the Secretary of Public Works, Manuel Quintero V."

This recommendation, in perfect conformity with the duty of legal protection falling to the government, was, however, not duly carried out by the Secretary of Foreign Relations, because there were pending at that time in this office important negotiations with the neighboring Republic of Costa Rica, and, although it cannot be understood, in what form these negotiations have been able to justify the non-exercise of the sovereignty of Panama within the national territory, it is a fact that during the time required for the discussions as to the concluding of the treaty known under the name of the *Guardia-Pacheco* treaty, the Executive of Panama remained in a condition of absolute, although not very well founded, abstention as regards the Sixaola.

Fortunately, the apparent obstacle accruing from these negotiations disappeared when they came to an end, culminating in a treaty not yet published, but known by all, which, as far as I know, is to be submitted to your consideration in the present session of the National Assembly.

As long as the *Guardia-Pacheco* treaty has not been ratified by the respective congresses, it will not have any legal existence. It can, therefore, only poorly be used as a pretext against the appropriateness of Panama extending its immediate jurisdiction over the territory adjudicated in the arbitration decision. For the more thorough understanding of the matter you should know, however, that the region situated to the North of the Sixaola River will remain a part of Panama, even after the treaty in question is approved, whose frontier line leaves within the national territory the zone comprised between Punta Mona and Cinocere, near Cuabre, on the left bank of the Sixaola down stream to the mouth of this river.

In effect the *Guardia-Pacheco* treaty says literally, as follows:—

"The frontier between the Republics of Panama and Costa Rica shall be formed by a line which, starting from Punta Mona on the Atlantic Ocean, shall follow in a southwesterly direction until it strikes the Sixaola River below Cuabre. From this point the dividing line shall follow on the left bank of the Sixaola River up to the place where it joins the Yurquin, or Zhorquin, River." . . .

This demarcation, as it does, leaves as property of the Republic of Panama the valley of the Sixaola and the port of Gandoan as far as Punta Mona; and the question is now, Why should its usufruct be left for a longer time still to Costa Rica?

It should not be forgotten that the Guardia-Pacheco treaty is awaiting ratification, not only in the National Assembly of Panama, but also in that of Costa Rica; that the latter Congress can only be convoked some time in May, 1907; and even if, expecting the best result in that matter, it is convoked in that month, three, four, and even five years more will be lost in the appointment of the boundary commissions and in the demarcating on the land of the frontier line,—a time which, necessarily, must finally destroy my hope.

Would it be just to expect me to wait that long?

The Republic of Panama, as regards its territory of the Sixaola, is confronted by the same duty as the owner of a thing of which he has been deprived; that is, the duty of recovering it. It is not well that the attitude of indifference of the nation concerning its territorial rights should still be prolonged. What will foreign nations think of your carelessness?

The Department of State of the United States has taken steps in this matter, to assure for American interests rooted in the north of the Sixaola the legal protection which is due to them. For this purpose it has sent to its diplomatic representatives in Panama and San José de Costa Rica instructions tending to obtain that end.

On the 25th of January of this year it sent to the American Legation in this city, for its transmission to the office of the Secretary of Foreign Relations, the following note:—

“This government . . . reserves for itself in favor of any American prejudiced against Costa Rica or Panama all the rights as regards the territory [of the Sixaola] for the violation of which the legitimate sovereign is responsible.”

The legitimate sovereign of the territory where the American interests are situated which are discussed here is the Republic of Panama, whose authorities have the duty to watch over their protection. This republic will therefore be responsible for the losses caused by its negligence in not extending its jurisdiction over the entire national territory.

In the letter of instructions, dated Washington, the 16th of April last, Mr. Elihu Root, Secretary of State, is more explicit. He writes as follows to Ambassador Charles M. Magooon:—

"Considering the actual relations of Panama to the territory in question [the Sixaola], it appears, that this republic has consented that Costa Rica continue as sovereign *de facto* until the ratification of the treaty. [He refers to the Guardia-Pacheco treaty.] . . . As such, and while Costa Rica has the possession *de facto*, it will possess the attributes which accompany such possession, such as collecting import duties, etc., in Gandocan.

"But the higher attributes of sovereignty will always rest with the legitimate owner, a reason for which it would be proper that Panama see to it that the rights and titles acquired in the national unappropriated lands within the area of the territory of the Sixaola be not prejudiced by Costa Rica, which only exercises there an accidental and precarious jurisdiction. Panama can reach this result by means of discreet representations made to Costa Rica, or protests or any other mode which is not force."

There is no doubt but that the situation called forth by the negligence of the Republic of Panama concerning the region of the Sixaola has few examples in the diplomatic annals of the world. This country—master of this territory in virtue of the perfect title of ownership,—to wit, the arbitration decision, and by mandate of its constitution and laws,—abandons, nevertheless, to the Republic of Costa Rica the possession *de facto*, or, in other words, the usufruct of that region, and does not realize that its tolerance or tacit consent does not only bring forth a situation which is exceedingly abnormal, but does also infringe and violate its internal public right.

The United States recognized for Costa Rica the possession *de facto* which she maintains in the region of the Sixaola, founded on the consent of the Executive of Panama; but, inasmuch as such consent is contrary to the constitution and the laws of the country, or, in other words, since the government cannot accede to anything which may in any shape or form be contrary to the written law, it must necessarily be conceded that the tacit consent of Panama to the fact that Costa Rica continue in the possession *de facto* to that part of the national territory which lies to the North of the Sixaola River is a consent which is void, and that the occupation founded therein is usurpation.

If the United States, for which the Republic of Panama only has the possession *de jure* in the territory of the Sixaola, is of the opinion that the latter entity as master has to look out that American interests established there should not suffer any damage, what will they think when they know that the possession *de facto* of Costa Rica rests on the frail pedestal

of an illegal consent, and that, if Panama does not occupy that territory, it is due to mere negligence?

Now is the time to act. Remember that, in view of the juridic truth of matters, Costa Rica cannot, without becoming an unpleasant and threatening neighbor, oppose any obstacles to your occupancy beyond the Sixaola. On the contrary, if international amity is not a vain expression, that republic should give proof of its friendship towards the Isthmus, abandoning willingly to Panama that which belongs to Panama.

Mr. President, Honorable Deputies.

HERBERT L. McCONNELL.

OCTOBER 16, 1906.

[*Daily Star and Herald*, November 14, 1906.]

OPEN LETTER.

THE SIXOLA QUESTION.

TO THE EDITOR:

*Sir*,—Since there has been considerable discussion through the local press regarding my memorial to the National Assembly, in which it is asked that the government repossess itself of that portion of the national territory situated between Monkey Point and the Sixola River (now held by Costa Rica), for the protection of fruit interests situated there, I beg to quote from certain documents in order that the situation may be better understood.

On April 16, 1906, Secretary Root wrote to the American legation at Panama, and (with the necessary changes) to the legation at San José, Costa Rica, as follows:—

(A copy of this communication is found on page 163.)

A supplementary letter was also sent to the legation at Panama, inquiring in substance why the Panama Government, after collecting duties on goods landed at Gadoan, between Monkey Point and the Sixola River, failed to protect the owner in their use. On April 27th, 1906, the legation at Panama cabled the State Department at Washington as follows:—

"In conference with the President, Guardia, and Obaldia, reference to jurisdiction over territory north Sixola was made. Gnardia said Panama conceded to Costa Rica the right to exercise complete jurisdiction, and Panama has no intention to withdraw said right until final action upon pending boundary treaty. He admitted that Panama had collected tariff duty on railroad material brought by American Banana Company from the United States to Gadocean, thence to Bocas del Toro, but denied that they had collected or attempted to collect duty on any part of the cargo not landed at Bocas del Toro. Will take up American Banana Company affairs as you directed by your letter of April 16th, received yesterday."

The legation later sent a letter report to Washington, a portion of which was confidential. My attorney, writing from Washington concerning that portion of this report which was made to him, said in part: "Panama has stated positively to Governor Magoon that she does not claim any sovereignty whatever, either *de facto* or *de jure*, in the Sixola valley, and considers the Loubet award faulty in many particulars, and in case of attack on the part of Costa Rica likely to be set aside. Her President and Minister of Foreign Affairs have taken the position that they will not do anything to assert their claims to jurisdiction, or make any representation in your behalf to Costa Rica. As we have formally advised you, it would be of great advantage to us and the Department of State acting in your interests if in dealing with Costa Rica they could nominally be asserting the claims of Panama. Panama, as you see, refuses to give us this advantage."

As to the statement embodied in the legation's cable despatch of April 26th (this despatch was signed "Magoon," but Mr. Sands, now American chargé d'affaires, tells me that it was sent by him), to the effect that Panama has not collected, or attempted to collect, the duties on that portion of the Orn's cargo landed at Gadocean, I have to state that my memorial contains a complete copy of the statement of the Collector of the Port of Bocas del Toro that duties have been collected on the entire cargo, a portion of which was landed at Gadocean.

It is proper to state that during a conference on October 4th with the President and Mr. Ricardo Arias, Secretary of Foreign Relations, Mr. Arias, who, however, was not in office during the period that this correspondence took place, stated that Secretary Root's cable and letter despatches of March the 19th, and April the 16th, respectively, had never been formally placed before the Panama Government, he not having seen

them previously. Mr. Arias further stated that the legation cable and letter reports do not correctly represent the views of his government regarding the Loubet award, and the sovereignty and jurisdiction of the Sixola-Gadocan region.

He said that Panama's views coincide exactly with Secretary Root's as expressed in his letter despatch of April the 16th . . . [That is, that Panama is the sovereign, and has the right at any time to divest Costa Rica of jurisdiction.] It is apparent, therefore, that the President did not give expression to or sanction the statements contained in the legation's reports.

Mr. Sands tells me that Secretary Root's despatches of March the 19th (cable) and April the 16th (letter) never reached the legation.

I am just in receipt of a letter from my New York attorneys, dated October 16th, concerning these matters, reading in part as follows:—

"The present situation in Cuba seems to us to furnish a parallel. The administration intervened there because they were requested so to do by the President of the Cuban Republic. . . . In the case of Panama we think the obligation of the United States to interfere is as strong as it was in Cuba, but the Panama Government has not requested any assistance, and has not even intimated its desire to have Costa Rica withdraw from the Sixola territory."

The attorneys suggest, especially in view of the fact that there is no direct diplomatic communication between Panama and Costa Rica, that Panama might, through its representative at Washington, request the United States to intervene. As all are aware that the United States (Panama's friend), through treaty agreement guarantees the independence of the Republic of Panama, and since the United States, through Secretary Root, has recognized the Sixola-Gadocan territory as a part of the Republic of Panama, what is more simple and proper than that Panama should ask the United States to require Costa Rica to withdraw from that territory?

The United States could not, were it disposed (and there is no reason to suppose that it is), in view of its treaty obligations and Panama's reliance on that agreement (it having wholly disarmed), decline to comply with such a request. Panama, because of its treaty with the United States, is just as much stronger, for purposes of defence against seizure of its territory, than the latter government as its individual strength

amounts to For such purposes it has the combined strength of the two governments.

H. L. McCONNELL.

*P.S.*—Costa Rica declined to allow the American Banana Company to operate for the reason that its courts had, during the present year, decreed title to the lands to the United Fruit Company, stating that it was its duty to protect that company's interests. The only way, therefore, that Panama can protect the American rights acquired under its laws is to repossess itself of the territory. My attorney, in writing further regarding the American legation's letter report to Washington, said, "Panama has stated to Governor Magoon that in case the treaties are ratified she will not consider the decision of the Costa-Rican courts binding upon her, but that she would naturally be much influenced by such a decision, being the decision of a country which she recognizes as a sovereignty."

REPLY TO McCONNELL'S MEMORIAL TO THE NATIONAL ASSEMBLY OF PANAMA.

NOTES ON A PROMEMORIA.

Mr. Herbert L. McConnell has addressed to the National Assembly a memorial in which, after submitting sundry reasons and explaining the damages that have been caused to him by the occupation on the part of Costa Rica of the territory beyond the Sixaola River, he finally demands of the Assembly the issuing of a law, of which petitioner also submits a draft, by virtue of which the Executive is to be ordered to proceed immediately to take possession of certain tracts situated in that region, authorizing him at the same time to construct a key (quay) in the anchoring-ground of Gandocan, so called. Passing over the inconvenience that there exists if a private person presents drafts of laws to the Assembly, we will make some reflections on the promemoria submitted by the said Mr. McConnell, and based on some theories and assertions that must not go unchallenged unless there is danger lest the public should get wrong impressions and form unfavorable conceptions concerning certain official facts and acts, some of which emanated from the chancellery of the Isthmus, and which are discussed in the said promemoria.

There are two scientific methods by virtue of which the truth can be ascertained; viz., analysis and synthesis. Both shall be resorted to in the present reply, and we shall begin by giving a synthesis, or consideration as a whole, of the petition of Mr. McConnell.

This gentleman wants the Republic of Panama to take possession of a tract which since time immemorial has been occupied *de facto* by Costa Rica, and he bases himself on the fact that Panama, according to the decision handed down in September, 1900, by the President of the French Republic, is a *de jure* owner of the said territory.

It is a well-known fact that special circumstances of mutual convenience for the people of Panama, as well as of Costa Rica, have led to the concluding *ad referendum* of the Guardia-Pacheco boundary treaty, at the present time submitted to the National Assembly. At the very first glance the absolute inconvenience of the proceeding suggested by Mr. McConnell becomes evident, because that proceeding would break the

good harmony that has at all times existed between Panama and Costa Rica. One need not be especially well versed in the science of politics and in diplomatic courtesy to see at once how wrong it would be to effect such an occupation, which, if based on the Loubet decision, is absurd, and, if based on the Guardia-Pacheco treaty, would mean to force improperly into action a serious government.

I say force into action, because this treaty will be approved by the present legislature, in all probability, because it satisfies the legitimate aspirations of the contracting parties, and it also will be approved in a very short time by Costa Rica, where three days suffice for convoking the Congress, and where it is intended to convoke special sessions for this particular object.

We will now analyze the matter, and examine the three reasons on which the petitioner bases himself:—

- (1) That the region referred to is an integrant part of the territory of the Republic of Panama;
- (2) That the Panama authorities have exercised over it jurisdiction without protest on the part of Costa Rica; and
- (3) That the Republic of Costa Rica occupied this region only since July, 1904, without any other title than that of usurpation.

## I.

The first of said reasons is,—

“The region to which I am referring is an integrant part of the Republic of Panama.”

Above all, it is necessary to distinguish from which point of view Panama should be considered in order to see whether the region of Gandoan is an integrant part of its territory. Let us see whether it means the nation such as it is *de facto* or such as it ought to be according to right; the nation *in potentia* or the nation *in acto*; the juridical entity or the real entity.

Therefore, if we establish beforehand the difference that exists between right and fact, we shall reach the following conclusions:—

Considering the Republic of Panama as a political and geographical entity, the limits of which, according to the juridical title contained in the Loubet decision, reach beyond the Sixaola River, it can be affirmed that the region of Gandoan is an integrant part of its territory.

But if it is considered, that if the republic is considered, such as it exists at the present time,—that is, with respect to the extent of its sovereignty and jurisdiction,—if as Republic of Panama we designate that territory where it has established authorities that bring about the fulfilment of its laws, that collect taxes, and, in short, all the acts comprised within the exercise of imperium on the part of the sovereign, then the region of Gandocean is not an integrant part of Panama.

Therefore, the following theory established by Mr. McConnell with reference to the preceding is not admissible:—

“Those, therefore, are gravely mistaken that assume that an arbitration decision does not produce effects as long as the parties do not come to an agreement as to the manner of carrying it into effect, or that it remains a dead letter as long as a new agreement does not bestow life upon it, in which treaty the basis for its fulfilment are settled. . . . Moreover, as far as Colombia and Costa Rica are concerned, the decision in arbitration acquired, by mutual agreement of the parties, the character of a perfect and accomplished matter. That means that as soon as the decision was promulgated and the parties notified of the same it was ready for execution.”

In order to refute the above, it is only necessary to read the resolutions of Colombia and Panama \* of which I speak later on, and in which become manifest the opinions which the Chancellors of Colombia and Panama have uttered on the subject.

On the other hand, it is perfectly logical and natural to sustain that a territory in which a nation has exercised for immemorial time the imperium and sovereignty does not become *de facto* an integrant part of another State by the mere promulgation of an arbitration decision in a boundary question. It is necessary that after the decision the boundary should be materially marked, except, of course, the arcifinious territories. It is further necessary that, after marking the frontier lines, the transfer of the jurisdiction should take place in the proper way and with the formalities suitable thereto; that is, of the jurisdiction which used to be exercised by the losing State; further, that, after this has taken place, the acts and proceeding should take effect which organize the administration of the public property, subject to the laws that are to obtain in the region thus transferred.

\* On the suspension of a contract made by R. Roman Romero, for the construction of a railroad between Gandocean and the right bank of the Sixaola; and on the imposing of a fine on Mr. Dolder because of his having taken a Syrian from Gandocean to Bocas del Toro.

We may therefore agree, basing on what has been said above, that, as regards the first reason adduced by Mr. McConnell, it is necessary—to use a magnificent expression of Santiago Perez—to look at *facts* as *facts*, and to look for the vindication of *right* through diplomatic proceedings, retaining in the mean while the circumspection, in order that the same may also be retained in our behalf which is proper and customary between independent, adjoining, and, moreover, friendly nations.

## II.

The second reason is,—

"That over it [the said territory] the authorities of Panama have exercised jurisdiction without any protest on the part of Costa Rica."

To prove this assertion, Mr. McConnell cites two acts of real jurisdiction exercised by authorities of Panama, as he says. These acts were: firstly, "a permission to weigh anchor given by the Inspector of the Port of Bocas del Toro to the S.S. Orn consigned to Gandoan, and on board of which the said Inspector put three men of the coast guard in order that they be present at the unloading which was to take place at the said place; the second was the collection effected by the Provincial Tax Collector, also of Bocas del Toro, of the import duties for some materials for railroads which the said S.S. Orn carried."

Admitting the truth of these assertions of which the office of the Secretary of Foreign Relations has no official knowledge,\* we cannot but agree that, if Costa Rica has not protested as yet in writing to our government, it is only because the former government is convinced that these acts are not emanating from the Isthmus Chancellery, but are merely acts of some treasury officials who were not aware of the fact that the tacit agreement called *statu quo* entitled Costa Rica to occupy the territory beyond the Sixaola, while the definite demarcation of the boundary separating the two countries had as yet not taken place.

In fact, our Chancellery has recognized the provisory jurisdiction of Costa Rica in that territory by means of two acts which refute completely the two that we have seen. First, the decision No. 28 of August 2nd, 1904, in which Mr. Adolfo Dolder was condemned in a fine of \$200, under the provision of Law 6 and Decree 35 of the self-same year, for having taken to Bocas del Toro a Syrian who came from Gandoan, with whom

\* This office has demanded a report on these matters without having so far been able to get it.

the authorities of Bocas del Toro had nothing whatever to do while he was there. In its pertinent part this decision reads as follows:—

"Although by the Arbitration Decision handed down by the President of the French Republic Gandoan forms a part of the Territory of Panama, this decision has not been carried into effect as yet, and in the meanwhile (and while this is not carried into effect) the Government of this Republic *does not exercise jurisdiction in that place*, because it is situated within the boundaries, the dispute over which gave rise to the arbitration proceedings and because the *statu quo* agreed on thus demands it. Therefore the Government of Costa Rica is the present possessor of the place referred to, just as the Republic of Panama is the actual possessor of the Costa-Rican territory on the Pacific,—that is, of a certain part there. The carrying out of the Decision of Arbitration will give to each sovereign the possession of the land that belongs to him, and then the *statu quo* will have come to an end. But, as long as this does not take place, Gandoan will remain under the jurisdictional action of Costa Rica, and since it was there that the Syrian, whose name was George, was shipped, with his destination being a territory under Panama's jurisdiction, it is evident that Dolder and Co. infringed the law which prohibits the Chinese, Syrian and Turkish immigration, and likewise the Decree which regulated the matter, wherefore the Decision under examination (that of the Alcalde of Bocas del Toro) is correct and is herewith declared to be so." This declaration was signed by the then Secretary of Foreign Relations, Secretary of State Tomas Arias.

The second act was that where the Foreign Office abstained from complying with the request of the Secretary of Public Works in September, 1904, to request the Costa-Rican Government not to interpose any obstacles to the work that McConnell had started in Gandoan.

This international policy is entirely conformable with precedents from the time when Colombia was sovereign of the territory of Panama, the most notable of which is the suspension of the contract made by Richard Roman Romero in April, 1903, with the government of the Department of Panama.

Said Mr. Romero proposed a contract, afterwards entered into, on the construction of a steam tramway between the anchoring ground of Gandoan and the *right* bank of the Sixaola. Since on the official maps of those regions there appeared no such anchoring ground, the government believed that this was East of said river, and had therefore no idea that an international difficulty could arise as an obstacle for the contract.

But when the contractor submitted the plan and profile of the work, and stated that the railroad or steam tramway connected the bay of Gandoan with the *left* bank of the Sixaola, it at once took steps to cancel the contract as considering it in violation of that which Mr. McCounell states never existed, and which is commonly called *statu quo*.

The decision of the government, which entirely agreed with instructions received from Bogota, reads textually as follows:—

“OFFICE OF GOVERNOR OF THE DEPARTMENT; SECRETARY OF THE TREASURY;  
SECTION 3, NUMBER 78, PANAMA, September 9th, 1903.

“Whereas: On April 2nd of the current year upon petition of Mr. Richard Roman Romero, this office entered into a contract with the said gentleman, for the construction of a steam tramway which was to connect the small bay of Gandoan with the right bank of the Sixaola River. . . . Subsequently on the 1st of May Mr. Roman Romero transferred said contract to McConnell by deed Number 117 and with the consent of the undersigned. In due season Mr. McConnell presented plan and tracing required by clause 2 of the said contract, when examining the same it was seen at the first glance that the proposing party had made a mistake, undoubtedly involuntary, because the tracks for the railway run from the *left* bank of the Sixaola river to the Atlantic, to a small bay or inlet which does not appear on the official maps of that region, a mistake for which the concessionary cannot be made responsible, as it goes against his own interests, nor the Department either, for the same reason, and moreover because at the time when this contract was entered into it had no knowledge of the existence and less still of the place where this bay is situated, called Gandoan, since if that information had reached the government before it would not have entered into the said contract.

“Now therefore it is resolved

“1. . . .

“2. As long as the boundaries are not fixed definitely with the Republic of Costa Rica and as long as Colombia cannot enter upon the possession of the land that is coming to it according to the Loubet Decision, the terms of the said contract are suspended and the contracting parties shall not therefore incur any responsibility, since it has been shown that there was no bad faith on the part of either.

“Record, notify and publish.

“For the Governor.

“*The Secretary of the Government,*  
**JULIO GUERRA.**”

One must further remember the character of the two jurisdictional acts of which Mr. McConnell speaks and the circumstances that surrounded them, in order to become convinced that the second assertion of which we treated cannot be admitted as a reason in the form in which Mr. McConnell presents it, who plainly and clearly asserts that Costa Rica has not protested against those acts. There is no question that no written protest was entered, but it is just as certain that there was no necessity for that.

The first of these acts, indeed, as we have seen, was the permission to weigh anchor given to the "Orn," on board of which guards were put to see to the unloading of the cargo in Gandocán.

What happened as a consequence of this act? The reoccupation of the said place by Costa Rica, and that is where the protest was made (that is, the protest).

As regards the second act,—that is to say, the collection of duties for import on railroad materials carried by the "Orn," some of which were discharged in Bocas del Toro,—the Costa-Rican Government had nothing to do with it. It did not even need to consider itself as having been informed. The only government that could protest against that act was that to which the person injured by said act belonged in case—a case not come about yet nor ever likely to come about,—where justice should be denied to said person.

### III.

The third reason is,—

That the Republic of Costa Rica occupies this region since July, 1904, by way of usurpation.

Concerning this Mr. McConnell says, "I would state that this occupation is due, to all appearances, to *a thing which is said to have existed* between Colombia and Costa Rica before the promulgation of the decision, under name of *statu quo* or provisional frontier between the two countries"; and he then proceeds that the *statu quo* has never existed as a formal agreement between Colombia and Costa Rica.

In view of the facts there can be no earthly doubt but that there did exist a silent agreement between the two nations, in virtue of which Colombia exercised since time immemorial, and also after the Loubet arbitration decision, sovereignty over the peninsula of Burrica and a large

part of the Golfo Dulce, and that Costa Rica has occupied the western part of the Sixaola River.

Article 7 of the Gual-Molina treaty, cited by Mr. McConnell, proves that the state of things\* in 1825 was equal to the state of possession† in 1810 (different from what is known under the name of *de uti possidetis* of 1810), for neither New Granada nor Colombia has ever exercised real sovereignty beyond the Sixaola.

In the Historical and Geographical Atlas compiled by General of Engineers Augustin Codazzi and Mr. Manuel M. Paz there appears the line of the *uti possidetis* in agreement with the acts of the Spanish Government; but in the map of Colombia of 1824 this line of the frontier with Costa Rica is only advanced as far as the Sixaola in the North and the Golfito in the South.

Since the epoch of independence up to now this line has therefore been considered as the provisional line of the boundaries, because only in the regions which it divides each of the two countries has exercised real sovereignty, this provisional occupancy, which took place with mutual consent, being that which is called *statu quo*.

The opinions of the foremost geographers and statisticians of Colombia are conformable as regards this detail.

In April, 1880,‡ the Colombian Chancellery declared that it would only consider as acts of usurpation the jurisdictional acts which Costa Rica would exercise on the *eastern* side of the principal river-bed of the Culebras River in the Atlantic and hitherward of the Boca del Golfito in the Pacific.

With reference to this matter an error should be rectified which appears in the booklet of Mr. McConnell, which says, citing in his behalf the map of Ponce de Leon of 1864, that the Culebras River is many kilometers to the North of the Cabo Mona, wherefore the region of Gandocan comes on the side hitherward. I have not been able to get the map referred to to consult it on that point; but, aside from the fact that there is no cause why one should suppose, as does suppose Mr. McConnell, that this very map was the one which served as a guide to the Colombian Foreign Office to make the above declaration, there also exists the fact that no map shows in these regions another river of importance except the Sixaola, which is also known by the name of Culebras, Doraces, Tarire, and Telire.

Beyond the Punta Mona, and up to a small distance from Limon, there

\* *Statu quo*.

† *Uti possidetis* is the Latin for *como poseeis* ("As you possess")

‡ Note of Luis Carlos Rico copied in the booklet of Mr. McConnell.

appear no rivers of relative importance except the two following: the Mon or Hone River and the Rio del Norte. Concerning this item one can consult the maps of Betancourt, Peralta, Pittier, and of the Colombian Chorographical Commission, and of the Hydrographical Office at Washington, made with reference to that of Ponce de Leon y Paz (1864).

Inasmuch, therefore, as the Culebras or Doraces River is the same as Sixaola or Telire, I will now quote the opinions to which I referred before.

Victoriano de D. Paredes, Plenipotentiary of New Granada in 1853, spoke in favor of the demarcation of the dividing line, such as was then *de facto*; that is, "from the Doraces or Culebras River until the centre of the Golfo Dulce."

General Pedro Aleantara Herran adhered to the above when he proposed as a line not of right, but of convenience, one which "beginning in the middle of the principal mouth of the Doraces River which flows into the Atlantic, goes up stream always through the middle of the river-bed, until its source; thence along the summit of the cordillera (mountain range) to the crest of the Serrania de las Cruces, from there to the source of the Golfito River, and from there through the middle of the main river-bed of this river down to its opening into the Golfo Dulce."

This line was, as far as its northern part was concerned, adopted in the Herran Calvo treaty of 1856, and when reporting on said treaty Senator Pedro Fernandez Madrid suggested that it be adopted, with various explanations, of which the following was the first one: "that the River Doraces, Dorees or Dorado . . . is the first river at a short distance towards east from the Punta Carreta, vulgarly called Punta del Mono."\* . . .

Mr. Angel Diaz Lemos, in his official geography book on Colombia, says, when enumerating the rivers of the department of Panama, "the Doraces or Culebras which provisionally marks the boundaries with Costa Rica."

The same is said by Carlos Martinez Silva in his well-known geography.

In his Compendium of the History and Geography of the United States of Colombia Ricardo S. Pereira describes as follows the provisory frontiers with Costa Rica: on the east side of the Andes mountain range the Culebras or Doraces river in its whole length; on the west slope the line descends by way of a counter of the so-called las Cruces mountain range to the sources of the Golfito River, which follows the line down stream to the Pacific Ocean.

These provisory limits are the same which are presented in the respec-

\* This is a new proof of that which we have affirmed before concerning the fact that Sixaola is the same as Doraces or Culebras River.

tive works by Dr. Manuel Ancizar, General Tomas C. de Mosquera, Felipe Perez, and General Antonio B. Cuervo.

We have, therefore, proven more than sufficiently that Colombia and Panama have agreed that Costa Rica should occupy provisionally the region beyond the Sixaola, just as the latter nation has not entered any opposition to our sovereignty in Punta Burrica and Golfo Dulce. This tacit agreement, sanctioned by almost a hundred years of mutual consent, constitutes that thing which according to McConnell's affirmation does not exist, and which is called *statu quo*.

It can therefore be seen that it is venturesome and incorrect to assert of Costa Rica that it occupies presently and transitorily the Gandocan region with no other title than that of usurpation.

From the above the absence of any foundation for the reasons on which Mr. Herbert L. McConnell bases himself can be seen, when he petitions the Assembly to make a law whereby the Executive is ordered to take possession of the lands beyond the Sixaola River, occupied by Costa Rica since time immemorial by virtue of an agreement which does not cease to be efficient even if it be only one of custom.

Such an action on the part of Panama and its government, aside from the fact that it is contrary to agreement and to the practice of the Law of Nations, would also interrupt a diplomatic negotiation which has been started under fortunate auspices, which, when it has the approval of the National Representatives, will have fixed on the unaffected basis of cordiality the friendly relations which should exist between two nations which, owing to their geographical situation and their political conditions, are called to march side by side towards the fortunate future which appears to await them.

R. J. ALFARO.

REPORT OF A COMMITTEE OF THE NATIONAL ASSEMBLY  
ON THE MEMORIAL OF McCONNELL.

HONORABLE DEPUTIES:

The petition presented to the National Assembly by Mr. Herbert L. McConnell is closely related to one of the most serious problems the nation has to solve, and, therefore, this committee has been compelled to make a careful and thorough investigation,—as careful and thorough as permitted the lack of official documents and data which might have thrown light on the doubtful historical points involved.

The facts that seem to have been fully established and which have given rise to the petition submitted to our consideration are the following:—

After the arbitral decision by the President of the French Republic, which ended the controversy on boundaries between Colombia and Costa Rica, had been rendered, Mr. McConnell entered and cultivated certain lands which were situated within the territories assigned to Colombia by the said decision. Mr. McConnell transferred his banana plantations and his properties to the American Banana Company, and this company has been deprived of same by acts of the Costa-Rican authorities.

Such proceedings of the government of Costa Rica are based, as appears from semi-official declarations made by our Department of Foreign Relations, upon the existence of *a tacit agreement* between Colombia and Costa Rica by virtue of which there had been established a temporary boundary between the two countries pending the decision of the controversy above mentioned.

The above suggests the following questions:—

1. Has there actually existed between Colombia and Costa Rica a binding agreement by which temporary boundaries between the two countries were established?
2. When was that agreement entered into, and what are its stipulations and provisions?
3. Admitting the existence of such agreement, may its terms be enforceable even after the final arbitral decision has been rendered?

These questions have to be considered before deciding whether the Republic of Costa Rica had or at present has the right to exercise unlimited jurisdiction upon the regions assigned to Colombia by the Loubet decision, and, consequently, to do the acts mentioned in Mr. McConnell's extensive petition.

The said questions can be solved at the same time that the investigation by this committee is made.

The official history of the controversy on boundaries between Colombia and Costa Rica, published in the Diplomatic Annals of Colombia, does not show the existence of the temporary agreement mentioned in the first question.

An international agreement upon such an important question could not have been entered into and enforced without the expressed approval of the legislative powers of the countries interested in the controversy, and there is no law passed by Colombia containing any such approval.

The Molina-Gual treaty, executed in 1825, does not contain any stipulation that can be construed as establishing a temporary boundary, and the subsequent treaties were not ratified by the parties thereto. All these treaties contemplated the final and perpetual demarcation of a boundary line between Colombia and Costa Rica, but not a temporary boundary pending the decision of the case.

So it is found that the investigation of this important matter does not show the existence of any temporary agreement, either previous or subsequent to the arbitral treaty signed in San José on December 25, 1880, and exchanged at Panama on December 9, 1881. If there were any agreements between Colombia and Costa Rica entered into without the conditions required by the constitutions of both countries, such agreements would be null and void, and could not be binding upon the Republic of Panama.

In connection with this point there has been mentioned *a tacit agreement* or *statu quo* upon boundaries between Colombia and Costa Rica.

In international law there is no such a thing as *tacit agreements*. Such a term is a contradiction.

*Agreements* are public treaties entered into for specific purposes, and which, for that reason, have a transitory existence, but that circumstance does not exempt them from having the constitutional requirements which are essential to the validity of all treaties. An international agreement cannot be *tacit* because *tacit* is what is not formally said, but merely inferred, and the will and the consent of two countries cannot be inferred from their silence, but from positive acts solemnly declared by their public powers in the manner prescribed by their constitutions.

The so-called boundary *statu quo* between Colombia and Costa Rica never was an agreement, but merely an indefinite and undetermined position between two neighbors, which condition was not changed for the reason that the territories disputed were considered of little value. That

anomalous and precarious situation, therefore, was brought about by the negligence of the interested parties themselves: it was not the result of a positive contractual act between them. There was between the two countries a region which was inhabited, and upon which neither of the two countries had practical jurisdiction, and the one that first occupied that region asserted afterwards that such occupation was the *tacit statu quo* which they want to enforce now as valid, but which, in fact, is nothing more than mutual tolerance between owners of neighboring properties. That act does not establish the least right either between private individuals or nations.

Therefore, even admitting the existence of the said *statu quo*, and that thereby the Republic of Costa Rica was entitled to the possession of the left bank of the Sixaola River, it would be necessary to examine what is the term of that possession.

The term *statu quo*, used by diplomats, means a state of affairs before or after a war, a treaty, etc. (Dictionary of Zerolo & Isaza), and in the case at bar it could refer but to the state of affairs existing on the date of the exchange of the arbitral treaty between Colombia and Costa Rica, to wit, in 1881.

But what could be the purpose or the end of that so-called *statu quo* between the two parties to the controversy? The purpose could be no other than to leave things just as they were until the arbitrator should render his decision in the case. It would be strange and even absurd to agree upon a jurisdictional *statu quo*, to avoid conflicts during the period of litigation, and, after the decision ending such litigation is rendered, to argue the existence of that *statu quo* in support of claims upon things which, by virtue of that very decision, belong to others.

The following conclusions are rightly drawn from the above statements:—

1st. There is no official evidence of the existence of any temporary boundaries agreement between Colombia and Costa Rica binding, as a public treaty, the Republic of Panama, successor to Colombia.

2nd. Even admitting that such treaty had existed, it could be nothing more than a transitory agreement, the force of which ceased and determined on the day the arbitrator rendered his final decision, when such decision became, in accordance with the arbitral agreement, a treaty binding upon the parties, perfect and irrevocable, and to the upholding of which both countries had pledged their national honor.

From the above conclusions it is evident that all the territories assigned to Colombia by the Loubet decision which afterwards became a part of

the Republic of Panama are under the jurisdiction of the latter in those points where the dividing line is *natural*, as is the case in almost all of the line fixed by the arbitrator which is marked by natural accident of the land that can be easily identified. The decision says:—

"The boundary between the Republic of Colombia and Costa Rica shall be marked by the slope of the range of mountains from Cabo Mona on the Atlantic Ocean, and encloses on the north the valley of Tarire on the Sixaola River. Then by the watershed between the Atlantic and the Pacific up to the 9° of latitude, approximately, to continue, then, following the dividing line of the waters of the Chiriquí Viejo and the tributaries of the Golfo Dulce, ending in Punta Burica on the Pacific."

It will be observed that the line marking the boundary is *natural* in almost its whole length, the only point where it should be determined by experts being where it reaches the 9° of latitude.

Colombia first, and Panama afterwards, had a perfect right to exercise jurisdiction upon all territories within said natural line from the day the decision was rendered and published, and therefore the acts done by the Republic of Costa Rica to the East of that line cannot be justified, and protest against them should have been entered by the Panama Government.

From the brief examination made by this committee of the maps of the Republic showing the boundary line established by the Loubet decision, it appears that the mouth of the Sixaola and the place known by the name of Gandoan, in which are situated the plantations of the American Banana Company and the properties mentioned by Mr. McConnell, are located to the East of Punta Mona or Cabo Mona, which is the starting-point of the dividing line marking the limit of the Costa-Rican territory. From the above it will be clearly seen that those territories belong to the Republic of Panama, and should be under the jurisdiction of its government.

The Republic of Costa Rica, a country with which we are intimately connected, has not shown on this occasion, as far as those territories are concerned, the respect due to international harmony. This is particularly noticeable in a case like this where the rights of owner or lawful sovereign are involved, which rights have been recognized by a decision from which there is no appeal in accordance with the agreement of the parties to the contract. There seems to have been, on the part of that friendly Republic, a tendency to create in those territories new and powerful interests which might be the cause of future troubles for Panama.

Such a situation should not be allowed to continue, as it will have disastrous results for the country.

Now, in regard to the considerations suggested by the petition presented by Mr. McConnell, the committee is of the opinion that the said McConnell, as well as the company to which he transferred his properties, have a perfect right to the protection of the Panama Government, inasmuch as said properties are located within the territory of the Republic. But such protection cannot be given by mere legislative acts which could provide nothing that is not already provided for by the national constitution, which marks the territory of the Republic, and establishes the rights of its citizens and of foreigners, and by the laws that specify who are the authorities that must protect the rights of both citizens and foreigners.

The effective protection that a State can give to individuals consists of the acts of the executive officers, not of legislative provisions made in each case of violations of the individuals' rights. In conformity with the above principles this committee finds that it would be useless for the National Assembly to study and pass a law instructing the Executive to exercise jurisdiction upon territories on which it is bound by the constitution and the laws in force to exercise the same. On the other hand, it would not be proper to pass a law providing protection for the rights of McConnell, or the company represented by him, when the Executive is duty bound to give such protection immediately upon request.

However, considering the vast and important national interests involved, this committee deems it proper that the National Assembly give emphatic expression to its firm determination to maintain the absolute integrity of the rights of sovereignty of the nation, which rights have not been defended, that their importance demands. This committee, therefore, submits for your consideration the following resolution:—

**RESOLVED**

By the National Assembly of Panama

That the Executive Power be notified that the National Assembly deems it of the highest importance for the interests of the country to exercise of the jurisdiction to which the Republic is entitled upon the territories belonging to it by virtue of the decision of the President of the French Republic, rendered on the 11th day of September, 1900, and that, therefore, the proper executive instructions be issued for the prompt and effective exercise of such jurisdiction.

The petition of Mr. McConnell is referred to the Secretary of State and Foreign Relations in order that he give Mr. McConnell the protection provided by law.

EUSEBIO A. MORALES,  
GONZALO SANTOS K.,  
JEREMIAS JAEN,  
HECTOR CONTES C.,  
*Committee.*

PANAMA, November 13, 1906.

FINAL ACTION OF THE NATIONAL ASSEMBLY OF PANAMA  
IN ANSWER TO H. L. McCONNELL'S MEMORIAL.

PASSED 29th Nov., 1906.

Let H. L. McConnell be advised as result of his memorial, that the National Assembly has no power to decide the petition which he prefers.

*The Secretary of the National Assembly,*  
J. D. AROSEMENA.

OFFICIAL DECLARATIONS SHOWING THE STATUS QUO AND  
THE EXTENT OF THE JURISDICTION OF THE TWO  
COUNTRIES.

These are part of official correspondence on file with the State Department at Washington, and prove that the present declarations of the governments of Costa Rica and Panama as to the extent of their respective jurisdictions are strictly in accordance with the established historical precedents:—

TO MINISTER GRESHAM.

[FOR. REL. 1894, 195.]

No. 75.

LEGATION OF THE UNITED STATES,  
BOGOTA, October 1894.

(Received November 19.)

*Sir*,—I have taken from the report of the minister of foreign affairs a synopsis of matters which appear to me to be of some interest to the Government of the United States. I shall also forward the printed report of the minister, in order that the Department may inform itself more particularly upon any subject.

1. *Boundaries between Colombia and Costa Rica.*

[TRANSLATION.]

At your sessions of 1892 you were informed of the modification introduced into the proceedings relating to our boundaries with our neighbors on the north, in consequence of the arbitration treaties having lapsed. The causes of such lapse could not be more weighty, if we look at the letter and spirit of the treaties, nor more worthy of consideration, in view of the necessity of removing all danger of inefficacy in so important a matter as that of our northern frontier.

To maintain that treaties which are void, or of very doubtful force, may serve as titles to extremely valuable rights, is to maintain that a question of this gravity may remain unsettled, or liable to future objections. If the admission of the lapse of the treaties involved the breaking off of all amicable negotiations concerning the pending dispute, there would be some reason for claiming that those agreements, however defective, should continue to serve as a basis in this matter; but, as Colombia has declared her wish that they be renewed and amended, all claim to the contrary fails to be just or proper.

In the correspondence, which I have the honor to transmit herewith,

is set forth in detail the course of these negotiations in the last phase which they have assumed. Our Government wishes the question of our boundary with Costa Rica to be settled in the manner prescribed by justice, to wit, by renewing and amending the treaties as experience demands, and at the time and place which may be most convenient to both countries.

It is desired that the treaties should contain stipulations relative to the practical execution of the award, to the costs of the litigation, to the enlargement of the powers which the arbitrator should have, to harmonize, as far as possible, the chief interests of the parties; and our Government, in acting in this way, is actuated by friendship toward Costa Rica, and acts in confidence of its rights, strengthened by new evidence.

The Costa-Rican Government has at last assented to these proposals, as well as to that which has been made to it to fix upon a temporary boundary intended to put an end to the frequent complaints addressed to it by Colombia of the violations of the *status quo* to which both countries are pledged with respect to the possession of the zone now in dispute.

Complaints of this kind were mutual some time ago, owing to the surveys made by the Panama Canal Company in the districts adjacent to the Almirante Lagoon. The San José Government remonstrated at that time to the Colombian Government respecting the duties imposed by the *status quo* which had been agreed upon. The explanations on our part, however, were so candid and sincere that Costa Rica has not since found it necessary to make the slightest complaint of Colombia's proceedings.

This has not been the case with regard to our rights to present possession of a part of the zone in dispute. The authorities of Panama and Bocas del Toro, the periodical publications of the country, the documents published by Costa Rica, and respectable private individuals are continually informing the Government that agents of the neighboring Republic, by what authority is not known, are committing acts of possession incompatible with the duties which have been expressly acknowledged.

*On the Atlantic side, the Costa-Rican Government has definitely admitted that the boundary of present possession is formed by the Sixaola River, so that it has no right to exercise acts of jurisdiction on the right bank of that river; but, notwithstanding this, Costa-Rican agents or individuals have recently made surveys and drawn up maps on this side of the Sixaola.*

On the Pacific side, the Costa-Rican Government admitted, as far back as 1880, that it could not occupy territory situated on this side of Punta-Burica, for, at the demand of our Government, it vacated that territory

in a manner which may be designated as solemn; and yet it has just been learned, through a perfectly reliable channel, that in that territory, exclusively under the jurisdiction of Colombia, colonists are settling, under the protection, as is asserted, of the San José Government and without the consent of the Colombian Government.

To these two species of violation of the *status quo* must be added another, which affects the whole of the boundary between the two countries. The Costa-Rican Government recently published a geographical map of its territory in which its southern frontier does not even coincide with the extreme claims stipulated in the old treaties, but is drawn much farther this way than the straight line connecting Punta-Burica with Escudo de Veraguas, thus embracing a part of the Colombian territory which has not only been always under the jurisdiction and in the possession of the Republic, but forms a part of its undisputed territory.

These acts would not benefit Costa Rica, even if the arbitration treaties were in force, but would be prejudicial to her rights and interests, because they would prove, before the arbitrator, her disregard of indisputable and acknowledged duties. Notice having been given of the abrogation of those treaties, and Costa Rica being interested in their renewal, it is hard to understand why, at the very time that she is negotiating for such renewal, she puts an insuperable obstacle to it; for Colombia cannot consent to the amicable act of fixing upon a temporary boundary and renewing the arbitration compromise, until such irregularities have ceased.

This consideration has been the reason that the Colombian Government has hitherto confined itself to repeatedly calling the attention of the Government of the neighboring Republic (to these facts); and it has received from it the most satisfactory assurances in the sense asserted by Colombia. It is, however, to be presumed that the intentions of that Government have been thwarted by its agents, as several circumstances render it certain that the duties relative to the present possession of the disputed territory have not been thoroughly performed.

The theoretical statement of our rights and the protests against the violation of them have not, therefore, had the desired effect, and in this situation the Vice-President of the Republic has instructed me to address to the Ministry of Government a communication setting forth the condition of affairs and the necessity of organizing at Panama two peaceful but active and efficient expeditions, to go, one to Punta-Burica and the other to Sixaola, for the purpose of making an investigation at

the principal points in those districts, in order to learn the state of things and to make the rectifications demanded by the rights of the Republic.

"MARCO F. SUAREZ.  
J. A. UNDA."

JACOB SLEEPER,  
*Charge d'Affaires ad interim.*

LETTER TO MINISTER GRESHAM.

[Foreign Relations 1894, p. 185].

LEGATION OF COLOMBIA,

WASHINGTON, February 22, 1894.

(Received February 23.)

*Sir*,—When, in pursuance of the express instructions of my Government, I intended to make certain statements to the honorable Secretary of State relative to the boundary question pending between Colombia and Costa Rica, I learned with surprise that the U.S. Government was under the impression that my Government had not accepted the kind assurance of its friendly desire for the settlement of that dispute in accordance with the spirit of the treaty that was concluded to this effect, some years ago by the two countries, and I may deem it my duty to dispel that erroneous impression, which the course actually pursued by my Government is very far from justifying, as I hope to have the honor to show by means of a simple statement of what has taken place in connection with this matter.

The Government of Colombia and that of Costa Rica, by the treaty of arbitration concluded between them December 25, 1880, and the additional treaty of January 20, 1886, agreed to settle their boundary dispute by arbitration, and to this end they appointed, in the first place, His Majesty Alfonso XII., and afterwards Her Majesty the present Queen Regent of Spain, as arbitrators. According to the treaties referred to, decision was to be pronounced within twenty months from the date of the acceptance of the office by the arbitrator, which acceptance took place on the 19th day of June, 1887, so that, according to the express letter of the agreement, his jurisdiction was to terminate February 19, 1889. The last named day arrived, and the decision had not been pronounced, and the Government of Colombia informed that of Spain, through the Spanish representative at Bogota, under date of October 9, 1891, that, since the term fixed for pronouncing a decision had long since ex-

pired, its jurisdiction was ended, in consequence of which the Government of Her Majesty the Queen Regent of Spain declined to have anything further to do with the matter.

If a final arrangement on this subject has not been reached sooner, this is the fault of Costa Rica, which has claimed that that boundary should be extended until it encroached upon the region to which Colombia has a very ancient right of possession, and which is governed by its laws. The contrast between the course pursued by each country is very noteworthy: Colombia, acting uprightly, keeps within the limits of its right; Costa Rica, on the other hand, constantly provokes dissensions by attempting to extend its jurisdiction farther than it is now authorized to do. Both nations should respect the *status quo* established in 1881, which, for Colombia, is law, and for Costa Rica a dead letter. As a recent practical case, I may cite, in proof of the foregoing statement, the course pursued by the present Costa-Rican minister of foreign affairs, Mr. Jimenez, who, four years ago, when he filled the same office, admitted that the river Sixaola was the dividing line between the possessions of Colombia and Costa Rica, so that the eastern bank of that river belongs, incontestably, to Colombia, notwithstanding which, and in spite of the protests of the latter country, the Government of Costa Rica continues to place authorities in that region, thereby abusing the patient and upright attitude of my Government.

Fortunately, the time when these annoying differences must cease seems to be not far off. According to the last notes exchanged between the two Governments, there is a willingness on the part of both to conclude a new treaty, submitting their conflicting claims to arbitration, only that of Costa Rica desires that, when a new treaty is concluded, the validity of the old ones be submitted to arbitration, to which Colombia objects as being useless and illegal.

A new treaty is what the conditions of the dispute require, both because it is evident that the preceding ones have lapsed, and because provision may thereby be made that the decision that may be pronounced in consequence thereof shall be executed independently of the legislative action of each country, and that it shall determine what is necessary for the payment of the indispensable technical commissions that will have to trace the final boundary line. Recent and painful experience induces Colombia to pay special attention to these points, although they are apparently mere points of detail.

I will not close this note without declaring, in virtue of express author-

ization, that, if the decision of the arbitrator should adjudge to my Government control over the territories which it thinks belong to it, it would recognize the rights of private parties therein, and the transfers of actual ownership made by Costa Rica. Citizens of the United States or any other foreigners that have obtained concessions of unimproved lands or who, for any other just cause, are the owners of lands, shall be maintained in possession thereof, since every valid title is to be respected.

Hoping that I have obtained the friendly purposes which I had in view, I have, etc.

JULIO RENGIFO.

MR. SUAREZ TO MR. JIMÉNEZ.

[For. Rel. 1894, p. 184.]

REPUBLIC OF COLOMBIA,  
DEPARTMENT OF FOREIGN AFFAIRS,  
BOGOTA, January 12, 1894.

MR. MINISTER:

Once more, and obliged by recent reports received by the Colombian Government, I have the honor earnestly to call your excellency's attention to the grave fact that Costa Rica, as is asserted, is performing jurisdictional acts on the right bank of the river Sixaola, which river, as that government has admitted, is to mark the border line of the present possession of our two countries. If this fact is so, the Colombian Government, making use of the right which is conferred upon it by the said admission, and complying with the common obligation which has for some time bound the two republics, namely, to respect the *statu quo* of the international possession, will be obliged to proceed to positive acts in the defence of the inviolability of the said territory. It is not to be supposed, however, in view of the wisdom and fairness which distinguish your excellency's government, that it will be necessary to proceed to such extremes. Wherefore, once again, I beg your excellency to do all in your power to stop that occupation, against which, to protect the interests of Colombia, I solemnly protest.

I also avail myself of this opportunity, Mr. Minister, to again call your excellency's attention to the need of completing, as soon as possible, as a practical demonstration of incontestable force, the adjustment of the provisional boundary between Colombia and Costa Rica. The mutual relations of the two states being so cordial, and the inclinations being so sincere in favor of a final settlement of the boundary question by means

of arbitration, it is evident that the complaints arising from the want of such temporary arrangement may have a pernicious effect upon these kind feelings.

I beg, etc.,

(Signed) MARCO F. SUAREZ.

MR. JIMÉNEZ TO MR. SUAREZ.

[For. Rel. 1894, p. 190.]

REPUBLIC OF COSTA RICA,  
DEPARTMENT OF FOREIGN AFFAIRS,  
SAN JOSE, February 13, 1894.

MR. MINISTER:

I have had the honor to receive your excellency's communication of the 12th of last January, in which you call the attention of my government to the fact that Costa Rica is committing jurisdictional acts upon the right margin of the "Sixaola," in violation of the *statu quo* in force between the two countries. Therefore, my government, always jealous in regard to the fulfilment of its international duties, feels obliged to inform your excellency that it has not dictated any act in deterioration of the *statu quo*, and that, in order to obtain the most accurate solution of this delicate matter, it has requested information from the respective authorities, and hopes that the Colombian Government will have the kindness to expressly state the acts which led to its reclamation, in order to proceed according to the dictates of justice and international law.

I have also the honor to inform your excellency that my government has named two scientific commissions, one under the charge of Naval Captain Don Eliseo Fradin, and the other under the charge of Don Enrique Pittier, the object of the first commission being to make a plan of the Sixaola, Tarire, Tiliri, or Tilarío, of the Yurquin, tributary of the latter, known in Colombia under the name of Dorado, or Doraces, aside from other rivers and places of that locality, situated in Costa-Rican territory; and the object of the second commission being to astronomically establish the position of the Sixaola, or be it the point at which the Tiliri or Tilarío flows into the Atlantic, and the spot at which the latter joins the Yurquin, whose right bank is considered as the limit of the *statu quo*; and also of the Lipurio, or be it San Bernardo, situated unquestionably in Costa-Rican territory, and of other important places of that region.

The said commission left this capital eight days before the receipt of

your excellency's communication. I therefore do not believe that it could have referred to them; but I take this opportunity to inform your excellency that these commissions have been appointed for the study of the frontier territory. After the foregoing explanation, which is a guarantee of the fair dealing of my government, I trust that the Colombian Government will be satisfied; and, with the assurances of my high appreciation and distinguished consideration, I remain, etc.,

(Signed) MANUEL V. JIMENEZ.

MR. SUAREZ TO MR. JIMÉNEZ.

(For. Rel. 1894, p. 191.)

REPUBLIC OF COLOMBIA,  
DEPARTMENT OF FOREIGN AFFAIRS,  
BOGOTÁ, May 18, 1894.

Mr. MINISTER:

I have the honor to refer to your excellency's notes of the 12th and 13th of last February, relative to the boundary controversy now pending between Colombia and Costa Rica.

In your first note your excellency accepts, in the name of your government, this government's proposal to renew the treaty in regard to the arbitration of the boundaries and to decide upon a provisional frontier. In your second letter your excellency explains certain acts touching the interruption of the *statu quo*, which has been in force since 1880, in regard to the zone of territory at present in dispute between Colombia and Costa Rica.

In regard to this last point your excellency assures my government that it duly appreciates the fact that Costa Rica has not performed, is not performing, and will not perform any act in deterioration of the *statu quo*; that is to say, it has not performed acts of dominion, jurisdiction, or occupation in the territory extending along the right bank of the river Sixaola.

This declaration is very welcome to the Colombian Government, which hopes that certain public acts, such as those referring to the succession of Temistocles Penaranda, and others about which the authorities of Bocas de Toro have complained, committed by the citizens of Costa Rica, will have been distinguished by the government of San José. It also hopes that explicit instructions will be given the commission of engineers,

about whom your excellency speaks in your note of February 13, not on any account to extend operations to the territory on this side of the said river, for such an act would violate the obligations of the two nations, and render impossible further negotiations, as I have already had the honor to inform your excellency.

I improve this opportunity to call your excellency's attention to an act which can also hinder the termination of the matter which occupies us, unless immediately rectified by the Costa Rican Government. I refer to a map published not long ago, in which, instead of continuing to designate the boundaries between the two countries by the line which marks the most extreme claims of Costa Rica, it has been advanced much more toward the east, so that not only the possible rights of each nation are not taken into consideration, but an evident act of intrusion has been committed upon territory which has not been in dispute.

The Colombian Government hopes that your excellency's government will rectify as soon as possible this error, and declare that it is without signification, not only in regard to the rights, but also the pretensions of Costa Rica respecting Colombian dominions. As soon as this has been rectified, this ministry will be pleased to enter into negotiations with that under your excellency's worthy charge about the settlement of the provisional boundary, and the removal of the arbitration treaty in regard to definite frontiers, to which end the respective commission will shortly be given to the envoy extraordinary and minister plenipotentiary of Colombia in Washington.

I have, etc.,

(Signed) MARCO F. SUAREZ.

## CHAPTER 9.

**Containing a full citation and explanation of the laws of Colombia and Panama relating to the cultivation and denouncement of unoccupied public lands, and showing that no such laws were in force in the department and republic of Panama.**

**THE GENERAL LAWS OF COLOMBIA CITED BY H. L. McCONNELL AS SUPPORTING HIS RIGHT TO PLANT.**

[TRANSLATION.]

41. Any individual who occupies uncultivated land pertaining to the Nation for which he has not made application by the law, and who establishes on some a habitation and work, acquires the right of proprietorship over the territory which he cultivates, whatever may be its extent. (Art. 1, law 61 of 1874.)

42. The law maintains the principle, that the ownership of the waste lands shall be acquired by their cultivation, whatever may be their extent, and orders that the Public Ministry officially protect the cultivators and settlers in the possession of said lands, in conformity with the law 61 of June 24, 1874. (Art. 1, law 48 of 1882.)

43. The agents of the Public Ministry will officially protect the cultivators of the waste lands, it being the duty of said agents to give them legal voice in the judgments of properties which may be moved against them. (Art. 6, Law 48 of 1882.)

44. If there is on the waste lands pasturage for cattle, or the plantation of cocoa, coffee, sugar cane or other class of perennial planting, the colonist, besides acquiring the property which is conceded to him by the foregoing article (Nos. 41 and 42) will have the right to be adjudged gratuitously a portion of the adjacent territory, equal in extent to the part cultivated. The Executive Power will fix the rules which should be observed to facilitate for the colonist the demarcation and adjudgment of said adjacent territory. (Art 2, Law 61 of 1874.)

(The full text of these laws appears on pages .)

[COPY.]

RICARDO ARIAS,  
 DR. EUSEBIO A. MORALES,  
*Commissioners.*  
 WM. NELSON CROMWELL,  
*Counsel.*

SPECIAL FISCAL COMMISSION  
 OF THE  
 REPUBLIC OF PANAMA,  
 49 WALL STREET, ROOM 1212.  
 NEW YORK, December 20th, 1904.

[TRANSLATION BY MR. MACGRANE COXE.]

(*Fol. 15 of the Memorial.*)

MR. HERBERT L. McCONNELL,  
 Washington:

*My dear Sir,—*With much pleasure I comply with your request that I should state my deliberate opinion with respect to the rights which you have acquired as cultivator of certain lands situate in the Province of Bocas del Toro, Republic of Panama.

### I.

In consequence of the vexatious question with respect to the territorial limits between the Republics of Colombia and Costa Rica, the two countries agreed upon a *status quo* by which they bound themselves not to exercise jurisdictional acts upon the opposite banks of the river Sixaola while the controversy respecting the boundaries should be pending before the designated arbitrator which was first the King of Spain and afterwards the President of the French Republic.

The decision was rendered on September 11, 1900, and by it was declared that Colombia had jurisdiction of all the territory included in the valley of the river Sixaola. From the very day on which this unappealable decision was rendered the *status quo* existing between the two countries became virtually abrogated, since its sole object had been to avoid conflicts of jurisdiction during the period of the litigation.

The controversy having been settled (*concluida*) by an arbitral decision, which, in so far as it referred to the river Sixaola and its valleys, would not point to any kind of doubt, those territories became a part of the Republic of Colombia, without any further controversy or proceedings, since the delimitation or demarcation of the lines by means of surveys is hardly a material act and can in no way affect the substance of the rights declared by the arbitrator.

Considering this territory as under Colombian jurisdiction from the

date on which the decision was promulgated to the two adjoining nations, Colombia has ever since been empowered to exercise the rights of dominion and sovereignty and both its citizens and foreigners had the right to enter these regions under the protection of its laws and to inhabit and cultivate them.

## II.

Accepting these premises as absolutely correct, if you have occupied uncultivated lands embraced in the zone adjudicated to Colombia by the arbitral judgment of President Loubet, your rights, as cultivator, in conformity with the laws of Colombia, are indisputable.

According to the laws, 61 of 1874 and 48 of 1882, which I do not copy *verbatim* since I have them not now at hand, every cultivator of national lands acquires the ownership of the territory which he cultivates, and, if the cultivation consists of permanent plants, he acquires in addition the right to have adjudicated to him a portion of adjoining lands equal to that cultivated.

As a consequence of this ownership, such cultivators have the right to introduce on their plantations every kind of improvements for their internal advantage, such as railways, electric plants, wharves, etc., etc. Solely in a case where the party interested shall desire to offer these services to the public or to extend them beyond the occupied territory has the public authority the right to establish restrictions or especial conditions.

The laws of the Republic of Colombia which grant these rights have been in force without interruption in the Republic of Panama since the day of its separation, and they are applicable to-day to citizens of Costa Rica and foreigners alike.

I am of the opinion, therefore, that you have acquired a perfect right to the ownership of the territory in which your banana plantations are and that the Republic of Panama owes you the legal duty to give you efficient protection in the enjoyment (or possession) of this right.

I am, sir,

Your obedient servant,

(Signed) EUSEBIO A. MORALES.

## DECREE NO. 92 OF 1881

(9 of February)

By which all transfers of unappropriated land situated in the state of Panama WERE SUSPENDED.

*The President of the United States of Colombia :*

WHEREAS the Senate, in its session of the fourth of the current month approved by unanimous vote, the following motion:

"The executive power is to be requested to suspend all sales or adjudication of unappropriated lands in the state of Panama: except the adjudication to farmers who have acquired the right, until this congress legislates on the subject."

AND WHEREAS on account of the project to excavate an inter-oceanic canal, which is now on the way to realization, the tracts of land which the nation possesses in that state may in time acquire a great value, and consequently it is wise to wait until express laws are enacted on the manner of disposing of such lands, either for the benefit of the public treasury, or in order to assist the same undertaking so as to facilitate it,

DECREES That from the date of the present decree all the adjudications and sales of unappropriated land situated in the state of Panama are suspended. Therefore, the president of the state shall not decree any provisional adjudication except only in favor of such farmers who, at the date of the publication of this decree in the official gazette of the state, hold rights acquired according to the laws, which they will have to prove in due form.

Given at Bogota, 9th February, 1881.

(S)

RAFAEL NUNEZ,

*Secretary of the Treasury.*

(S)

ANTONIO ROLDAN.

I hereby certify that the foregoing is a true copy of Decree No. 92, dated February 9th, 1881, as published in the *Official Gazette* of Panama (No. 574), under date of June 30th, 1892; said *Official Gazette* being the official organ of the State, or Department, of Panama, and Republic of Colombia.

IN WITNESS WHEREOF I have hereunto set my hand and official seal  
this 14th day of April, 1906, at Bocas del Toro, Republic of Panania.

L. F. RYAN,  
*American Consular Agent.*

(SEAL)

The following are authorities showing that Decree No. 92 of 1881 re-mained in force.

RESOLUTION

*Concerning the Grants of Unappropriated Lands.*

SECRETARY OF THE TREASURY,  
BOGOTA, November 12, 1889.

In view of the preceding memorial and

WHEREAS the sale of unappropriated lands in the extinct state of Panama has been forbidden by an Executive Decree, number 92, of February, 1881, and whereas the said interdict is in force at this moment, the grants issued in favor of said extinct state and which by virtue of sales of its Government, have passed into the hands of private parties, would at the present moment not have any value whatsoever, unless they would be made adjudicable in some unappropriated tract of the republic, since at the present moment they are only so in Panama,

NOW THEREFORE it is decreed, That the grants issued on the 26th of September, 1881, in favor of the extinct State of Panama are made to extend to adjudications in any unappropriated tract of the Republic.

*The Secretary,*  
FELIPE F. PAUL.

(*Official Gazette*, number 7961.)

BOGOTA, April 24th, 1897.

TO HIS EXCELLENCY THE GOVERNOR OF THE DEPARTMENT,  
Panama:

I have the honor of referring to the esteemed communication of your excellency, number 18th of the 11th of February last, wherewith you forwarded to the finding of this ministry the decree issued by the government on the 9th of February last, bearing on a consultation of the Alcalde of Bocas del Toro concerning a dispute that arose between Messrs. Teodoro

and Andres Nuñez on the boundaries and possession of the meadow which they are occupying.

Since the adjudications for any unappropriated lands in this department having been suspended absolutely, on whatever grounds they are sought for, according to Decree 92 of February, 1881, this ministry is of the opinion that there is no reason that to the individuals, between whom the dispute has arisen which gave rise to the decree and the consultation of your excellency, the character as colonists or cultivators, nor that they should be given the rights as such.

The provision of article 5 of the Law VI. of 1874 which refers to controversies or disputes between settlers of unoccupied lands who have settled on one and the same locality, without there existing any prohibition to settle there, does not obtain here, since the unoccupied land of Panama is not awardable. The ministry is therefore of the opinion that it neither falls to you to adjust differences nor revise any decision caused by the occupation of lands, between individuals who have settled there subsequent to the prohibitory decree numbered 92 referred to.

MANUEL ESGUERRA.

OFFICE OF THE SECRETARY OF THE TREASURY.  
SECTION 3, DECREE No. 95.

PANAMA, April 1st, 1902.

Mr. Pablo Pinel petitions by means of the preceding *promemoria* for the reconsideration of the order of this administration of the 1st of March last, passed pursuant to a petition made by him, and further petitions that the petition made by him be decreed conformable, said petition bearing on the adjudication of twelve hundred hectares unappropriated land, by means of a foregoing substantiation of the matter, conformably to the decrees, regulations and executive orders obtaining in the matter, which he asserts should in no case be passed over.

The petitioner says that "the only foundations which serve as basis for rejecting *a priori* his claim, rest on the fact that the national government upon solicitation of the senate of plenipotentiaries issued decree Number 92 of the 19th of February eighteen eighty-one suspending, as says the Secretary of the Treasury, from that day the adjudications of unappropriated land situate in the State of Panama, and further on the fact that by a written communication number 18 of the 7th of February eighteen ninety-

seven the administration of the Department solicited from the National Government the reconsideration and modification of the said decree in that meaning that the prohibition treated therein be withdrawn, to which request the National Government would not accede, considering that the reasons which were taken into account when issuing said decree were still in existence," and to show that none of them is admissible he makes the following declaration: —

"In the first place the reservation made of a predetermined surface of unappropriated land in this department had for sole object to guarantee to the said company the right granted to it to select those [lands] which came to it pursuant to the concession, but inasmuch as the same had determined the zone or zones which it found suitable to take for itself, the said reservation no longer has any *raison d'être*, and there disappears therefore the prohibition to which the decree cited by you refers. With all the more reason since in the region of the Darien to which my petition refers a considerable number of hectares was adjudicated to the same company, and it could not there in any manner or shape claim any other adjudication."

"The spirit of the decree quoted was not and could not be that the government should bind itself perpetually not to alienate its unappropriated land, and not to be able to grant the usufruct of them contrary to (the spirit of the legislation regulating this matter. The trustworthy history thereof and its object so clearly manifested in its context show evidently that the prohibition or reservation had but a temporary character, which ceased to exist as soon as the object was attained which the government when issuing said decree had in mind.

"Such was the understanding of the Executive Administration of Vice-President Caro when he dictated decree number 109 of the 9th of February, eighteen ninety-four, issued more than thirteen years later than the one which is cited by the Secretary of the Treasury, and which I take the liberty of inserting here in full in order to bring forth the inapplicability of the decree of which I complain.

Decree number 109 of eighteen ninety-four, February 9th, by which is abrogated Section 5 of Article 1 of the decree of the 15th of September, 1868, in which certain parts of the unappropriated land of the nation are destined for public use. The Vice-President of the Republic, in charge of the Executive. Pursuant to the report of the Secretary of Foreign Relations, of the 27th of November, eighteen ninety-

three, and considering, first that the said decree was issued especially for the purpose of reserving a certain area of the unappropriated lands in anticipation of the fact that the line of the interoceanic canal projected should follow the course of the Atrato River, a way which has been declared impracticable, aside from the fact that it was decided that for the digging of the said canal the region adjoining the Panama Railroad should be adopted, and considering, second, that the canal company has already taken in the region of the Darien a considerable part of the land coming to it, and that at the present time there does not exist any agreement with said Company on the part of the government, to reserve for it any predetermined zone, since the same must solicit like any other private party the adjudication of such land as it may need, in any other part of the territory of the Republic. From all these reasons the validity of section number 5 referred to, whereby a considerable amount of the unappropriated lands are withdrawn from agriculture and colonization:

Now, therefore, DECREES

SOLE ARTICLE: Section 5 of the decree of the 15th of September eighteen sixty-eight is abolished.

Given at Bogota, February 9th, eighteen ninety-four.

M. A. CARO.

*The Secretary of the Treasury, PEDRO BRAVO.*

*Official Gazette, No. 9401.*

"FEBRUARY 23RD, 1894."

"Section 5 mentioned in this decree is the one which approves the prohibition impeding the alienation of certain unappropriated land, because the same is reserved for certain public uses, and inasmuch as this has been especially abrogated, as we have just seen, it would not be possible to found on this disposition the order which I have proposed to impugn. Nor can it be argued that the suspension treated of in decree number 92 of eighteen eighty-one was instituted subsequently to that which now appears abrogated, because although no reference thereto appears in it, it also is abolished, because it contains the same prohibition, and as there exists, as it really does, another subsequent decree, which settles the matter integrally. An accepted rule of construction holds that when a later provision is contrary to another and preceding one, and if both antedate the fact to be judged, the later provision prevails.

"If there were, therefore, some ignorant minister who declared in the communication of which you speak, that there still existed the reasons for maintaining the contested prohibition, this is of no account, inasmuch

as the orders or resolutions given administratively by this judge are not sufficient to establish a precedent.

"Aside from these considerations, in themselves powerful enough to carry to your mind the conviction that an error has been committed, another circumstance contributes to corroborate my petition; and that is, that adjudications have been effected of unappropriated lands in the same district of Darien, that is, the place for the adjudication of the land which I claim, in a recent period of time, and that the corresponding grant has been furnished by the Secretary of the Treasury of this Department.

"Upon searching the archives, it will be found that on the 27th of November eighteen ninety-seven five thousand hectares of unappropriated land were adjudicated in exchange for territorial titles, to Mr. Luis Galbois in the valley of Seteganti, in the Corregimiento of Cana, in the district of Pinogama, province of Panama, and department of the same name, and that the Executive approved everything."

To dispose of the matter, the following was taken into consideration:

In its decree of the 15th of September eighteen sixty-eight, the national government considered:

*First:* that the opening of an interoceanic canal in Colombia territory has been declared by law to be of public utility;

*Second:* that the adjudication to private persons of unappropriated lands situate in the immediate neighborhood of the plan of the ways through which the interoceanic canal could be practically laid out, would increase the difficulties for the realization of this work, and that the executive should prevent as much as possible such difficulties, within the sphere of its constitutional functions, abstaining therefore from the adjudication to private parties of said land, considering it necessary for public service;

*Third:* That for reasons also of importance for public service the Republic should preserve the ownership of the unappropriated land near the maritime ports whose direction and administration are within the province of the general government, and likewise the ownership of such land where there are salt mines or salt wells of national ownership even if the same are not in process of exploitation; and keeping in mind the different routes through which interoceanic canals or railroads are considered practicable according to the different explorations made up to that time in the territory of Colombia, it declared applicable to public uses the unappropriated land comprised between 6 degrees 30 minutes and 8 degrees 20 minutes latitude north, and 2 degrees 20 minutes and 3 degrees 30 minutes west longitude of the meridian of Bogota.

By decree number 92 of the 9th of February eighteen eighty-one, the General Government in consideration of the fact that the senate of plenipotentiaries in its session of the 4th of that month approved unanimously the following proposition: "The executive is urgently requested to suspend all lease or adjudication of unappropriated land in the state of Panama, excepting the adjudication to farmers who have already acquired the right thereto, until congress legislates on the subject," "and for the reason that, on account of the project of excavating an interoceanic canal which is near its realization the land which the nation possesses in that state may finally reach great value, and that therefore it is prudent to wait until express laws are made concerning the manner of disposing thereof, either to the benefit of the national treasury or for the purpose of furnishing assistance to the said enterprise so as to facilitate it," [the government] declared suspended the adjudication and leasing of unappropriated land, situate in the state of Panama, and ordered that the President of the State should not decree any further provisional adjudications, except in cases indicated there.

The prohibition involved in the decree of the 15th of September eighteen sixty-eight is not the same as the one to which the decree 92 of eighteen eighty-one refers, because they obey different motives, the first one being decreed for the purpose of obviating difficulties for the construction of the interoceanic canal, and the second is a purely fiscal measure, having for object the benefit of the state treasury. Such was without doubt the understanding of the senate of plenipotentiaries when it, in spite of the validity of the decree of the 15th of September eighteen sixty-eight, requested the issue of the one of eighteen eighty-one already mentioned, and such was also the conception of the executive when issuing decree 92 of the same year.

Decree 109 of 1894 abrogates section 5 of the decree of the 15th of September, 1868, but it neither abolishes nor even mentions number 92 of 1881, and, although it is certain that a rule of construction in our law holds that in case one subsequent law is contrary to another preceding one, and if both antedate the fact to be tried, the subsequent one prevails, it is also certain that special provisions such as the prohibition established by decree No. 92 mentioned prevail over those which may have a general character.

The copy submitted by Mr. Pinel of the telegram sent from Bogota by the Secretary of the Treasury to the Governor of the Department authorizing him to let the petition of Mr. Galbois proceed (in January, eighteen ninety-seven) is an evident proof that at that time it was not assumed

that decree number 109 of eighteen ninety-four abrogated number 92 of eighteen eighty-one, because that special authorization would not have had any sense without the existence of the said prohibition.

The national executive has considered decree 92 of eighteen eighty-one in force since the issue of No. 109 of 1894, and so has stated in a letter sent to the Governor of the Department by the Secretary of the Treasury, No. 1074, third section, department of unappropriated lands, under date of the 24th of April, eighteen ninety-seven (subsequent to the authority granted Galbois), said letter being published in No. 1060 of the *Panama Gazette*, and which reads as follows:—

REPUBLIC OF COLOMBIA, SECRETARY OF THE TREASURY,  
No. 1074, SECTION 3, DEPARTMENT OF UNAPPROPRIATED LANDS.  
BOGOTA, April 24th, 1897.

To THE GOVERNOR OF THE DEPARTMENT,  
Panama:

I have the honor of referring to the esteemed communication from you under number 18 of the 11th of February last, wherein you send to this secretary for its final decision the resolution issued by your office on the 9th of February last, because of an inquiry on the part of the Alcalde of the District of Bocas del Toro, concerning a dispute which has arisen between Messrs. Teodoro Cambes and Andres Nunez, concerning the demarcation and possession of the land which they occupy respectively.

"Inasmuch as absolutely all the adjudications for any title whatever, of unappropriated land in your department are suspended, pursuant to a decree number 92 of February eighteen eighty-one, the ministry is of the opinion that there is no reason why the individuals between whom the dispute has arisen which has been the cause for the resolution and also your inquiry, should be given the character as colonists and cultivators, nor why they should be recognized as possessing the rights of such.

"Therefore the provision of article 5 of law 61 of eighteen seventy-four does not apply in this case, inasmuch as said article refers to controversies and disputes between settlers on unappropriated land who have settled in one and the same locality without there being any legal impediment preventing the adjudication to them, and inasmuch as the unappropriated land in the department of Panama is inadjudicable, this office is of the opinion that it is not pertinent to it to decide controversies or pass on orders originated through the occupation of land of individuals settled there, subsequent to the prohibition effected in the said decree number 92.

"At the same time I regret to inform you that as to-day still the reasons prevail which were considered as important for the issue of such a decree, it is not possible to accede to your desire concerning its reconsideration, and modification.

"I return to your office on four written sheets copy of the resolutions which you sent with the letter to which I reply. God preserve you.

"MANUEL ESGUERRA."

Inasmuch as, as has just been shown, the prohibition entailed by decree 92 of eighteen eighty-one is in force, this office is not competent to give free course to any petition concerning adjudication of unappropriated land and it is useless to argue contrary thereto, that in eighteen ninety-seven there was issued a grant of the Secretary of the Treasury of the Department for adjudicating a parcel of this land. First, because this was done by express order of the Secretary of the Treasury of the Nation, who, by law, intervenes in all adjudications made; and, second, because even in the case of this express authorization not having intervened, any set which violates a law in force does not form any authorization to commit the same violation, nor does it in any case establish a legal precedent.

The party interested, however, has still the recourse to the Secretary of the Treasury, and to try to obtain there an authorization of a similar character, as that obtained by Mr. Gaibois, and the undersigned governor suggests this course to him.

For these reasons

It is *Resolved*, That there is no cause for revoking the decree of this office, number 92, of the 1st of March last, issued in strict compliance with the specific orders of the national executive.

Further report to the Secretary of the Treasury is to be made, for a definitive decision in this important matter.

*The Secretary of the Treasury.*

A true copy from the book of resolutions of section 3, for the month of April, nineteen hundred and two, entered on pages 166 to 179.

Panama, July 12th, nineteen hundred and six.

*The Sub-Secretary of the Treasury.*

(Signed)

The laws in force when the Republic of Panama was created, were continued in force.

## DECREE No. 4 OF 1903

(November 4)

*On the Provisional Organization of the Republic.*

The Provisional Government Council of the Republic decrees:

**ONLY ARTICLE.** In the Republic of Panama shall govern the laws which have been in force until now, with the modifications and alterations which the political change that has been effected requires, and with those which the provisional government decrees in subsequent decrees.

To be published.

Given at Panama, November 4th, 1903.

J. A. ARANGO.

FEDERICO BOYD.

TOMAS ARIAS.

EUSEBIO A. MORALES.

CARLOS A. MENDOZA.

MANUEL E. AMADOR.

F. V. DE LA ESPRIELLA.

NICANOR A. DE OBARRO.

*The Secretary of State**The Minister of Justice**The Secretary of the Treasury**Secretary of Foreign Affairs**Minister of War & Marine*

A specific ruling of the Executive of the Republic of Panama that Decree No. 92 of 1881 remained in force in that Republic.

REPUBLIC OF PANAMA.  
MINISTRY OF PUBLIC WORKS.  
SECTION 2a, No. 264.

PANAMA, July 11th, 1906.

Mr. Julio J. Fabrega, in a *promemoria* dated the 29th of June last, directed to His Excellency the President of the Republic, submits the following inquiry:

*First:* Whether decree number 92 of eighteen hundred and eighty-one, issued by the President of the United States of Colombia, and by means of which the adjudication of unappropriated land in the then sovereign state of Panama was in force on the 3rd of November, nineteen hundred and three.

*Second:* And if the said decree has ceased to be in force in the Republic of Panama, "within what date and for what reason."

*Third:* And if at the present time said decree is in force "since what date and for what reason it thus obtains."

To resolve on the three points transcribed, the following is considered:—

That since the issue of decree number 92 of eighteen eighty-one the petitions which have been submitted at different times for the adjudication of unappropriated land in the sovereign state of Panama, afterwards department of the same name, and lately Republic of Panama, have been rejected because of the prohibition entailed by the said decree, not having been considered as a temporary measure, but always as a general measure as long as no law or decree should have abrogated it expressly. This is confirmed, because although Mr. Miguel A. Caro, in charge of the Executive Power, abolished in his decree 109 of eighteen ninety-four section 5 of decree of the 15th of September, eighteen sixty-eight, which contained a prohibition similar to the one contained in the aforementioned decree, he did so only for the purpose of obviating difficulties for the construction of the canal, for the French canal company, but the Colombian government in said order did not even quote in the considerative part the said decree 92, whence it must be deduced that there was no intention of modifying a measure tending to benefit the national treasury, through the greater value which the unappropriated land situated in the territory of Panama would soon possess because of their being in the neighborhood of the important works of that enterprise. Therefore, both at the time when Panama was a sovereign state, and when it became a part of the central government, in eighteen eighty-six, the secretary in charge of the branch of unappropriated lands has never in his administrative provisions or in his bills intended a modification or abolition of decree 92 of eighteen eighty-one, the issue of which was requested by the very senate of plenipotentiaries. Nor is it of any use to allege that shortly after the political transformation of eighteen eighty-six the French company entered *in moram* and that the work on the canal was suspended. Considerations of greater and different value induced the secretary of the treasury, Mr. Paul, in his order of the 12th of November, eighteen eighty-nine, to state clearly that the decree was in force. Also Mr. Esguerra, holding the same portefeuille, and pursuant to an inquiry directed to him by the governor of the department of Panama, said and resolved in the same sense in his letter of the 24th of April, eighteen ninety-seven.

For the sake of discussion it might be added here that law 48 of eighteen eighty-two like other administrative provisions of a general character, on the mode and manner of making adjudications of unappropriated land, should have supplanted the decree of which we have been speaking; but, if the national executive for reasons of a high public utility issued the same,

it is clear that he established an exception and a special measure which must prevail by force of principles and juridic reasons.

The above shows therefore incontrovertibly that decree number 92 of eighteen eighty-one which prohibited the adjudication of unappropriated lands on the isthmus was in force in Colombia from the date of its issue, up to the 3rd of November, nineteen hundred and three, the day on which the new Republic of Panama was proclaimed.

When the public authorities organized, the legislative body of the country after issuing the constitution, and perhaps for the purpose that the decree number 92 should not be exposed to the danger of being abrogated, issued by executive provision law 61 of the 31st of May, nineteen hundred and four, which prohibits the adjudication of unappropriated land in the territory of the Republic, until laws on the subject should be passed.

In view of the foregoing considerations,

**IT IS RESOLVED**

*First:* The executive decree number 92 of eighteen eighty-one was actually in force on the 3rd of November, nineteen hundred and three;

*Second:* The said decree ceased to be valid in the Republic of Panama from the time of sanction of law 61 of nineteen hundred and four, which replaced it in its effect.

Thus the three questions of the *promemoria* which originates this order are replied to and resolved on.

Register, communicate and publish.

*Signature of his Excellency the President of the Republic.*

*Sub-Secretary in charge of the Office,*

LADISLAO SOSA.

A true copy.

*The Sub-Secretary of the Office,*

LADISLAO SOSA.

Ricardo Arias, Secretary of State and of Foreign Relations, certifies that the above signature, which reads "Ladislao Sosa" is authentic, and that Mr. Sosa occupies the office of Sub-Secretary of Public Works.

Given at Panama on the 12th of July, 1906.

RICARDO ARIAS.

40 cent revenue stamp cancelled.

## [FORM FOR AUTHENTICATION OF SIGNATURE.]

CONSULAR SERVICE, U.S.A.  
PANAMA, PANAMA, July 14, 1906.

I, Arnold Shanklin, Consul General of the United States at Panama, Panama, do hereby certify that the signature of Ricardo Arias, at the foot of the paper hereto annexed, is his true and genuine signature, made and acknowledged in my presence, and that the said Ricardo Arias is personally known to me.

In witness whereof I have hereunto set my hand and affixed the seal of the Consulate General at Panama, Panama, the day and year next above written, and of the Independence of the United States the 13. (Stamp.)

(SEAL)

ARNOLD SHANKLIN,  
*Consul General of the United States.*

LAW 61 OF 1904

(May 31)

A Law of Panama on the same subject.

By force of which temporarily the adjudication of national unappropriated land is suspended.

The National Convention of Panama decrees

ARTICLE 1. While and until the National Convention enacts the law which will regulate the adjudication of unappropriated land for agricultural purposes and the exploration of forests, the proceedings which are pending on adjudication of land or which might be presented in the offices of competent administrative officials are suspended.

ARTICLE 2. The president of the Republic will communicate this decree by telegram to the governors of the provinces as soon as this law is sanctioned causing the same to be published by circular if he should think it necessary.

Given at Panama on the 21st of the month of May, 1904.

*The President,*  
(Signed) J. A. HENRIQUEZ.  
*The Secretary,*  
(Signed) JUAN BRIN.

Office of the President of the Republic, Panama, May 31st, 1904.

AMADOR GUERRERO.

To be published and carried out.

*The Secretary of Public Works,*  
MANUEL QUINTERO V.

Explanation of the laws in force in Colombia.

LAW 57 OF 1887

(April 15th)

*On the Adoption of Codes and the Unification of National Legislation.*

The Legislative National Council decrees:

ARTICLE 1. Ninety days after the publication of these laws there shall govern in this Republic with the additions and modifications whereof the said law treats the following codes:

The National Civil Code, sanctioned May 26, 1873.

The Commercial Code of the extinct state of Panama, sanctioned October 12, 1869.

The National Code on the same matters, edition of 1884, which deals solely with maritime commerce.

325 law 153 of 1887.

The Penal Code of the extinct state of Cundinamarca, sanctioned on the 16th of October, 1858.

The National Judicial Code, sanctioned in 1872, and revised by the law 76 of 1873, edition of 1874.

The National Fiscal Code, and the laws and decrees having force of laws concerning the organization and administration of the national revenues, and the national military code, and the laws which supplement and modify it.

FULL TEXT of the LAND LAWS of Colombia, decrees relative thereto and official procedure thereunder which were suspended in the State (afterwards Department and then Republic) of Panama.

LAW 61 OF 1874.

(24th of June.)

*Supplementary to Title 10 of the Fiscal Code.*

The Congress of the United States of Colombia decrees:

ARTICLE 1. Any individual who occupies uncultivated land belonging to the nation for which no special application has been provided by the law, and who therein establishes his dwelling, and does farming, acquires the right of property on the land he may cultivate, whatsoever may be the area thereof.

ARTICLE 2. If in unappropriated land pastures for cattle, cocoa plantations, coffee plantations, cane sugar plantations, or any other class of permanent plantations be established, the settler aside from acquiring the ownership conceded to him by the previous article, will be entitled to have adjudicated to him gratuitously a portion of contiguous land equal in area to the part cultivated. The executive will establish the rules which must be observed to facilitate for the settlers the demarcation and adjudication of the said adjacent land.

ARTICLE 3. In the case that those who populate unappropriated land mark out for themselves the land in which they establish themselves, enclosing it with firm and permanent enclosures, capable of preventing the passage of wild animals and cattle, every settler shall acquire the property of all the land comprised within his enclosures.

ARTICLE 4. The settlers who may be in possession of unappropriated land shall be considered owners of the parts cultivated, and thirty hectares adjacent to the said parts. As owners shall be considered those who have constructed dwellings, and founded permanent cultivations, during more than five years of continued possession.

ARTICLE 5. When in one and the same locality various settlers establish themselves, and if in the pursuit of their work disputes should arise, the political authority in charge of the administration of the district or "Corregimiento" (district of a corregidor), within the competency of

which this locality is situated, shall, upon the written or verbal petition of any of the settlers, summon before it the persons between whom the dispute has arisen, and if the said authorities cannot succeed in having the said persons reach an amicable settlement, the official, after previously inspecting in person the land, will proceed to demarcate provisionally the boundaries within which each of the colonists can continue his work. The official in charge of making the demarcation will make a record of all the incidents thereof, in a report which he shall send to the President or Governor of the State, or to the Prefect of the Territory, for his approval.

ARTICLE 6. Uncultivated land in which work is done peacefully during more than one year will be considered unappropriated land, for the effect that the colonists that occupy said land may be considered as possessors in good faith, and cannot be deprived of the possession except pursuant to a judgment handed down by a civil court or court of first instance.

The interdicts of possession treated in article 1218 of the judicial code shall not be admissible against the settlers who shall have worked peacefully during more than one year the land of the possession of which it is intended to deprive them.

The provisions of this article shall only be applicable concerning the unappropriated land that may be adjudicated subsequently, and in no case concerning real estate the title of which is dated prior to the date when this law was sanctioned.

ARTICLE 7. In the localities occupied by cultivators of unappropriated lands, the executive will reserve the area of land that he may consider necessary in order that the present cultivators may extend their work, and for the settlement of new settlers. This area of land reserved for the settlers shall be fixed in each case by the executive, after he has been supplied with a report from the President or Governor of the State, or the Prefect of the Territory, where the locality is situated.

ARTICLE 8. The cultivators who shall abandon the land which is conceded to them by this law, during a period under four years, shall lose the rights that they may have acquired in such land, which will revert to the national domain.

ARTICLE 9. The executive is authorized to assist the first one hundred families of European emigrants which may settle in the Sierra Nevada de Santa Marta, with a sum of one hundred dollars for each family. This subsidy shall be given after the necessary guarantee is given, to each

family or to the entrepreneur or entrepreneurs who undertake the colonization of that territory, as the executive may see fit.

1. The executive is likewise authorized, first: to subsidize the government of the State of Magdalena with the amount of two thousand pesos, for the construction of a road opening communications between the colony and the port of Santa Marta, as soon as at least ten families of European emigrants have established themselves in the Sierra Nevada de Santa Marta, and second: to subsidize, if the government of said state undertake any scientific exploration in the territory of the Nevada said enterprise with the sum of one thousand pesos.

2. In the same manner as determined in the preceding dispositions, the executive is authorized to furnish assistance to the emigrants whether Europeans or from the colonies that may establish themselves in any point of the high Sinu in the State of Bolivar.

ARTICLE 10. In the immediate neighborhood of the public roads opened or to be opened subsequently no adjudications of unappropriated land can be made that may have an extent of more than two kilometers along said road; those receiving adjudications of this kind of land, are obliged to clear and cultivate at least the twentieth part of said land, within five years following the date of the adjudication. In default of fulfilment of this obligation, the land adjudicated will revert to the national domain.

ARTICLE 11. Along the sides of each of the lots of unappropriated land that may be adjudicated in the immediate neighborhood of the roads mentioned in the preceding article, the executive power will reserve the lots of equal area, which can only be sold for money, or distributed to new settlers.

ARTICLE 12. All the adjudications of unappropriated lands that may be made subsequently, and which cover an area exceeding two hundred hectares, shall be made in square lots so that the official charged with conveying possession thereof can in each case rectify the dimensions of any of their side. When the adjudication comprises an area of more than five thousand hectares, the surveyor who attends to the survey must determine the astronomical position of the land.

ARTICLE 13. In the four years following the date of this law, the President or Governors of the States and the Prefects of the Territories shall have the same promulgated once a month on that day where the largest number of people of each district congregate; and in the visits made by the said officials personally or through their agents they will see that the rights of the settlers are respected.

ARTICLE 14. The provision in article 914 of the fiscal code will obtain when the excess amounts to more than a tenth part of the land petitioned for; thus when it does not exceed the said tenth part all the land will be adjudicated to the denouncer, if he pays therefor in the manner provided by the said code.

ARTICLE 15. The Presidents or Governors of the States, or the Prefects of the National Territories, shall see that the land occupied under the terms of the preceding articles, are bounded, and shall send the files to the Secretary of the Treasury, in order that a corresponding title of adjudication may be issued.

ARTICLE 16. For the effects of article 879 of the Fiscal Code, the document evidencing the payment shall be considered as a legitimate title, provided that the interested party have designated the time of adjudication and that at least twenty years have passed since said payment was made.

Given at Bogota, twenty-second of June, 1874.

*The President of the Senate of Plenipotentiaries,  
President of the Chamber of Representatives,  
Secretary of the Senate of Plenipotentiaries,  
Secretary of the Chamber of Representatives,*

LUIS CAPELLA TOLEDO.  
MATEO ITURRALDE.  
JULIO E. PEREZ.  
J. DAVID GUARIN.

Bogota, 24th of June, 1874.

Publish and Execute.

*The President of the Union,*

S. PEREZ.

*The Secretary of the Treasury and Public Works,*

AQUILEO PARRA.

(Published in the *Diario Oficial* numero 3,199, of 1874.)

#### LAW 48 OF 1882.

(28th of August.)

#### *Relating to Unappropriated Lands.*

The Congress of the United States of Colombia decrees:

ARTICLE 1. The law maintains the principle that the ownership of unappropriated lands is acquired by cultivation, whatever may be the extent and orders that the attorney general protect *ex officio* the cultivators and settlers in the possession of said land, conformable to law 61 of the 24th of June, 1874.

To acquire gratuitously the portion of adjacent land equal in area

to the one occupied, with pastures for cattle, conformably to article 3 of the law 61 of 1874, it is necessary that said portion occupied be covered with artificial pastures. The owners of cattle pastures who have established themselves in natural pasture grounds of the unappropriated lands, shall only be entitled to the use of said land as long as they are occupied.

The property of the land fenced in by the colonists in the manner described in article 3 of the law 61 of 1874 shall not extend over a portion larger than twice the amount of that which is cultivated.

ARTICLE 2. The cultivators of the unappropriated land established therein with dwelling-house and farm work, shall be considered as possessors in good faith, and it shall not be possible to deprive them of the possession except by a judgment handed down in a common civil suit.

ARTICLE 3. Unappropriated land is considered as property of public use, and the ownership thereof does not prescribe against the nation in any case, conformably to the provision in article 2519 of the civil code.

ARTICLE 4. In the plenary suit on property of land, the only admissible suit against the cultivators of unappropriated land established therein with house and farm work, the complainant must exhibit the legal titles of ownership of the land which he claims, which must have an age of ten years at least, and in which there must be expressed with perfect clearness the boundaries of the land which he claims as his own.

ARTICLE 5. Even in the case that the cultivator lose the ownership suit, he shall not be dispossessed of the land which he occupies, except after he has been indemnified for the value of the improvements wrought on the land, as possessor in good faith.

1. The improvements to which this article refers, consist in the clearings, fences, cultivations and dwellings, which will be appraised by experts, as is provided by the judicial code of the Union, in the territories, and the judicial code of the State, in which the adjudication may have been effected.

2. As long as the payment has not been effected representing the value of the improvements, there exists no right to demand the ejectment.

ARTICLE 6. The agents of the attorney general shall protect *ex officio* the cultivators of unappropriated land, and said agents must be considered as legitimate parties in the suits for ownership that may be instituted against the latter.

ARTICLE 7. The unappropriated land which the nation may alienate for any cause, reverts gratuitously to it at the end of ten years if, within

this time, some agricultural or cattle industry have been established in said land.

The regulations of the executive shall determine beforehand and with absolute certainty, the relation between the area adjudicated and that which shall be cultivated or occupied for cattle raising, necessary to preserve said adjudicated area, but in no case shall there be fixed less than one-tenth part of the adjudicated portion for such purpose.

ARTICLE 8. Unappropriated land which for any cause is adjudicated remains subject to the necessary servitudes for the convenient use and enjoyment of the land which remains unappropriated and which may require these servitudes.

ARTICLE 9.. In every adjudication of unappropriated land, for whatever cause it may be made, it is understood that the rights of ownership of the occupiers are expressly saved, and these shall be protected against the adjudicataries according to the terms of the present law.

ARTICLE 10. In every adjudication of unappropriated land which may comprise an area of more than one thousand hectares, the surveyor who attends to the survey and drawing of plans shall determine the astronomic position of the land by longitude and latitude, of one of its points, on any of its boundaries.

ARTICLE 11. In no case will it be possible to adjudicate to one and the same individual or company an area of land exceeding five thousand hectares, nor to different persons or entities in continued area an area larger than five thousand hectares. Thus between one and the other portion there shall always be left alternate lots of at least the same area as the adjudicated ones, which the nation may reserve exclusively for cultivators. In each case it shall be also required that the perimeter of the area which is to be adjudicated be such that its greatest length be approximately equal to its greatest width.

ARTICLE 12. Unappropriated land that exists in the mountain ranges that serve as boundaries for two or more states, and between the populated centres of each state, and the navigable rivers that may be national traffic ways, are reserved to be applied exclusively to the following objects: first, for the founding of new towns; and, second, for adjudications to cultivators; and, third, for the development of roads of communication.

ARTICLE 13. The executive shall prescribe all the provisions necessary that this law may be duly observed. He will order that thereof and of the provisions in force of law 61 of 1874 and its concordance there be made

a special edition, which shall be distributed gratis and widely in all the towns of the Republic, in order that it may come to the knowledge of the cultivators and settlers of unappropriated lands.

ARTICLE 14. The provisions of the present law do not affect the rights acquired by the adjudicataries or purchasers pursuant to the provisions in the matter in force at the time when the adjudication or sale was made.

Given in Bogota, August 24th, 1882.

*The President of the Senate of Plenipotentiaries,* ANIBAL GALINDO.

*President of the Chamber of Representatives,* FRANCISCO MUÑOZ.

*Secretary of the Senate of Plenipotentiaries,* JULIO E. PEREZ.

*Secretary of the Chamber of Representatives,* CARLOS COTES.

National Executive, Bogota, August 28, 1882.

Publish and execute. FRANCISCO J. ZALDUA.

*The Secretary of the Treasury,* MIGUEL SAMPER.

(Published in the *Diario Oficial* number 5,457, of 1882.)

#### DECREE No. 832 OF 1884.

(October 11th.)

*Enacting the Laws of 61 of 1874 and 48 of 1882.*

THE PRESIDENT OF THE UNITED STATES OF COLOMBIA:

WHEREAS:

*First:* To facilitate the acquaintance with the executive provisions on unappropriated land, referring to cultivators, it is necessary to embody them in one sole decree, from which it is possible to gain an insight into the proceedings for adjudication on gratuitous title;

*Second:* It is necessary to present clearly the intent of the laws on the matter, for the purpose that it may be known positively what are the rights conceded by these laws, and what are the obligations contracted by the cultivators that become adjudicataries of unappropriated land.

*Third:* The lack of acquaintance with the legal and executive provisions is the cause that the officials in charge of making demarcations for the cultivators established in said lands, may consider as acquired rights, facts that have not been within the conception of the legislators, and may bound portions of land which, according to the laws, should not be alienated,

a proceeding with which far from furthering the object of promoting agriculture, distribute suitably property and populate the deserted districts of the republic, rise is given to abuses which require to be remedied.

HEREWITH DECREES:

ARTICLE 1. The rights which laws 61 of 1874 and 48 of 1882 concede to the cultivators who have established themselves or may establish themselves in the land of the nation, are the following:

*First:* Every person that may occupy unappropriated land and may establish therein a dwelling-house and artificial cultivation, acquires a right of ownership to the cultivated land, whatever may be its area.

*Second:* If the cultivations consist in artificial pastures, coffee plantations [lit. seeded lands], cocoa plantations, or plantations of any other fruit wherein it is not necessary to repeat the sowing process to obtain periodic crops the cultivator acquires the right that he be adjudicated a portion of uncultivated adjacent land next to the cultivated portion and equal to the latter in area.

*Third:* If the cultivations are of the kind, where renewed sowing is required to obtain crops, as for potatoes, wheat, maize, etc., the colonist acquires the right to thirty hectares more of uncultivated land, adjacent to the tilled land.

*Fourth:* Any person who may have cultivated unappropriated land, and has thereon a house, and has not abandoned the cultivation for more than one year prior to obtaining the adjudication thereof, acquires the right of being protected *ex officio* by the authorities in the terms of law 48 of 1882.

*Fifth:* When land occupied by cultivators is solicited for adjudication in exchange for titles of concession, such cultivators are entitled to be protected in the possession of the land that they may have cultivated, and in the portion adjacent treated of in sections 2 and 3 preceding, whatever may be the time of the actual presence on that land. In this case the surveyors appointed for effecting the survey of the land shall demarcate the portions of the cultivators and deduct the area of the latter from that which results from the survey of the whole tract asked for in exchange of title. Without this requirement the adjudication shall not be decreed.

*Sixth:* If by way of an exchange of title, a tract occupied by colonists is asked for in adjudication these shall not have any right of ownership nor of any indemnification if as improvements they only exhibit stubble fields or overgrowth of weeds, nor shall they have any right to indemnification

for improvements when these consist in clearings and fences except in the case where there are cultivations and dwelling-houses, as these two conditions together are the ones that create the origin for the rights conceded by law, or where these clearings and fences have been made recently and in the intention of cultivating the land.

*Seventh:* No cultivator is entitled to have adjudicated to him two or more separate lots, conformably to provision of article 913 of the fiscal code. Therefore the officials in charge of making demarcations shall not effect such demarcations except on one sole lot where the colonist has his dwelling-house. The same rule shall be observed by the surveyors when demarcating the portions occupied by cultivators in the land solicited in adjudication, by way of an exchange of titles.

*Eighth:* No cultivator is permitted to sell the land he may possess as cultivated land except after he has obtained the title of property issued to him by the secretary of the Treasury of the Union, a title which shall not be definitive except when the cultivator proves that after obtaining it he has not abandoned the land during a period under four years, conformably to the provisions of article 8 of law 61 of 1874.

In this case the purchaser acquires the same rights and obligations which the vendor had, being therefore subject to the obligation of continuing the cultivation of the land, because, if he were to abandon the work during the four years of which article 8 already mentioned speaks, the land would revert to the national domain. If the cultivator should sell the improvements prior to obtaining the title, the purchaser is held to continue the cultivation of the land if he wishes to have his rights recognized, conformably to the provisions already established.

*Ninth:* The right of ownership to land which is artificially fenced in conceded by article 3 of law 61 of 1874, shall only be recognized in the case that the occupier has established cultivations, and never to a larger extent than twice the area of the cultivated part, conformably to provisions of the paragraph of article 1 of the law 48 of 1882. It is understood that the enclosures shall be firm and permanent, capable of preventing the passage of wild beasts or cattle.

ARTICLE 2. Conformably to paragraph under article 1 of the law 48 of 1882 those are entitled to the use of land which they occupy with cattle, who have established ranches in the natural pastures of the unappropriated lands; but as the said paragraph provides that the said individuals do not acquire right of property in the land and as the rights of the nation do not prescribe against said nation, conformably to article 3 of the same

law, land thus occupied shall be adjudicable to any one who may solicit the same by way of a title of concession; but circumstances being equal, the first occupier shall be preferred.

ARTICLE 3. Any person who, in the exercise of the rights conceded by laws 61 of 1874 and 48 of 1882, establishes himself with dwelling-house and permanent cultivations upon unappropriated land is bound to report this fact to the president or governor of the state or the prefect of the territory wherein said land is situated, stating what approximate area he has occupied with plantations, in order that the land occupied may be bounded for him, in conformity with the following provisions:

ARTICLE 4. When at the office of a president, governor or prefect the communication referred to in the preceding article has been received, the first political authority of the place where the land is situated shall be ordered to proceed, after by information as to the plain facts the land has been shown to be unappropriated, to carry out in connection with the representative of the attorney general, and two experts, the demarcation of the cultivated land, and of the adjacent portion, treated of in sub-sections 2 and 3 of article 1 of this decree, not forgetting, further, the provisions of sections 6 and 7 of the same article.

For demarcations of portions under one hundred hectares, the experts shall measure as exactly as possible the cultivated part and the adjacent part, specifying by an entry the operations performed by them for this purpose, in the corresponding record of demarcation. If this survey should not be possible, owing to the fact that the experts do not possess enough knowledge to survey land, whose perimeter is irregular, then the demarcation shall be made in square lots.

ARTICLE 5. Before effecting the demarcation, there shall appear for thirty days some advertisement in a public place of the district, where the land is situated, stating the general boundaries of the tract cultivated, the name by which the land may be known, the land on which it adjoins, and the petition for demarcation which may have been made. When the time during which said notice is displayed has expired, and no opposition has been presented, the demarcation shall be carried out, and the said notices shall be taken down to send their originals together with a record of demarcation, and the statement as to witnesses, to the president, governor or prefect, for the effects of article 922 of the fiscal code.

ARTICLE 6. The record of demarcation shall contain the name of the cultivator, the area of the land, which is demarcated in his favor, the boundaries within which it is comprised, and which must be fixed on the land,

and described in the records as clearly as may be possible, so as to avoid subsequent disputes, between the cultivators themselves, or with the owners of adjoining land.

ARTICLE 7. It is the duty of the presidents or governors of the states, or prefects of territories to procure for themselves the reports and documents necessary to prove the cases of abandonment of land adjudicated to cultivators, on the part of the latter, in order that it may be declared that the abandoned land reverts to the domain of the nation.

ARTICLE 8. Since up to the present time the provisions of article 15 of law 61 of 1874 have not been complied with, the presidents or governors of the states and the prefects of the national territories shall order that the political authorities of each district or corregimiento make up a list of all the cultivators established in their jurisdiction, that they demarcate the cultivated lands for those who have not as yet obtained the title of ownership, conformably with the provisions contained in the foregoing articles, that they report whether the said cultivators have complied with the provisions of the law, not to abandon the land, and to increase the cultivation, and that they send all these records to the office of president or governor of the state, or the prefecture of the territory for the effects of article 5 of this decree. The provisions in the foregoing article must be complied with as soon as possible.

ARTICLE 9. The duty of the surveyors appointed for surveying unappropriated land is as follows, both for adjudications solicited by cultivators and for those which are petitioned for by way of an exchange of title.

*First:* To leave around the land they may survey an area sufficient so that on each of the sides of the perimeter of the land surveyed there may be formed the lots which the law destines exclusively for cultivators, said lots not to have an area less than that of the land surveyed. No adjudication of land shall be decreed which forms a continuation of other land that may have been adjudicated as unappropriated to the same person who petitions for said land.

*Second:* The tracts which are surveyed shall be as regular as the conformation of the land allows, and in all cases shall the line of its greatest length be approximately equal to the greatest width of the land.

*Third:* They shall submit a scientific and specified exposition both of the operations carried out for drawing up the plan, and of the calculations made for determining the area of the land surveyed. Said exposition shall moreover contain an enumeration of the boundaries, starting from a fixed and invariable point, which is known, or can be recognized at any time,

the said statement to be as clear as possible, so as to avoid subsequent disputes with the owners of adjoining land, which latter must be indicated in the said report, the quality and climatic conditions of the land, as far as possible the resources in flora, or in minerals, of said land, and the geographical description of the district, which must embrace at least a radius of ten leagues.

*Fourth:* When the land surveyed has an area of one thousand hectares or more, the surveyor must determine the astronomic latitude, of one of the points, whatever it may be, of the perimeter, stating even approximately the seconds, and if the surveyors should have chronometers adjusted to the meridian of Bogota, they shall also make the calculation of the longitude approximately down to seconds. In the contrary case, the calculation will be as close as may be possible. In the corresponding report or record a detailed statement of the calculations and observations that may be made for determining the geographical co-ordinates shall also appear.

*Fifth:* The scale that is to be used for drawing up the plans shall be 1 millimeter to 10 meters, for adjudications below two thousand hectares, and 1 millimeter to 20 meters for areas over two thousand hectares, and up to five thousand hectares, which is the limit fixed by law for all adjudications.

*Sixth:* The plans shall contain all the topographical details of the land. The quotations in figures of all the lines of the perimeter, and of those appearing in the geometrical figures which may have been used for calculating the area; the magnetic direction of each side of the perimeter, the name of the owners of the adjoining lands, the name of the mountain ranges and of the rivers or ravines, the demarcation of land occupied by cultivators, if there be any (and concerning these, mention must also be made in the report). At the side of the plans the compass shall be indicated, likewise the geographical position, the square area in detail, and the scale. These plans must be submitted in duplicate, each signed by the surveyor and the party interested, after which they shall be authenticated by the respective president, governor or prefect of the national territory.

The government engineer in charge of the branch of unappropriated lands shall collect the geographical descriptions which each report contains in a methodical way, and the collection thus made shall be sent each year to the secretary of public works, etc., where the notes and corrections necessary shall be made on the maps of the republic.

ARTICLE 10. For the make up of every protocol on the adjudication of unappropriated land the display of notices for thirty days in the public places of the districts or corregimientos where the land petitioned for is situated is an indispensable condition. These notices which also shall be published in the official paper of the state, shall be displayed as soon as the denouncement, and the petition of adjudication of such land are made, and shall contain the name by which the land may be known, the general boundaries defining it, the name of the owners of the adjoining lands, and the petition for adjudication made therefor.

ARTICLE 11. Since the motive of the display of the notice referred to in the preceding article is that the owners of the adjoining land or those who may believe that they have some right to the land petitioned for, may make their claims in due time, the presidents or governors of the states or the prefects of the territories, shall not issue any decree bearing on survey and provisory adjudication of the land, before the time for displaying the notices has passed. In case there is any opposition the contest shall be decided on in the administrative way, in view of the titles which the opponent shall submit, before the decree spoken of above is issued.

ARTICLE 12. Both the cultivators who may obtain the adjudication of an uncultivated portion contiguous to the cultivated portion, and the persons that may obtain the adjudication by way of an exchange of title, shall cultivate the land within the ten years following the date of final adjudication, in the following proportions:

- 40 per cent. for adjudications up to 200 hectares.
- 35 per cent. for adjudications from 201 up to 300 hectares.
- 30 cent. for adjudications from 301 to 500 hectares.
- 25 per cent. for adjudications from 501 up to 1,000 hectares.
- 20 per cent. for adjudications from 1,001 up to 2,000 hectares.
- 15 per cent. for adjudications from 2,001 up to 3,000 hectares.
- 10 per cent. for adjudications from 3,001 up to 5,000 hectares.

The third section of the treasury shall demand in due season the reports necessary to know concerning which adjudications the conditions stipulated in article 7 of the law 48 of 1882, and 12 of this decree, must be complied with, in order that in default of fulfilment the land may revert to the national domain. The compilation of every act bearing on adjudication of unappropriated land must be made in conformity with the provisions of this decree, and in conformity with the circular which the secretary of the treasury will issue in due time, in the manner in which to make up documents wherein adjudication of unappropriated land for any title is petitioned for.

ARTICLE 14. Decrees No. 518 of 1874 and 371 of 1879 and 640 of 1882 are herewith repealed. Likewise is repealed resolution of the 8th of July, 1872, published in the *Official Gazette* number 2594, in which the quota to be adopted according to the area surveyed had been defined.

Given at Bogota, on the 11th of October, 1884.

*The Secretary of the Treasury,*

F. ANGULO.

RAFAEL NUNEZ.

(Published in number 6230 of the *Official Gazette*, of 1884, and reproduced in the No. 543 of the official register of 1893.)

CIRCULAR NUMBER 94,

*by which the drawing up of documents bearing on unappropriated lands is regulated.*

UNITED STATES OF COLOMBIA.

NATIONAL EXECUTIVE.

OFFICE OF THE SECRETARY OF THE TREASURY.

SECTION 3. DEPARTMENT OF UNAPPROPRIATED LANDS. NO. 94.

BOGOTA, October fifteenth, 1884.

To THE SECRETARY GENERAL, OR TO THE SECRETARY OF THE TREASURY OF THE STATE OF . . . OR TO THE PREFECT OF THE NATIONAL TERRITORY OF . . . :

Inasmuch as through the laws and through executive decree number 832 of the current year some of the provisions on which the circular 945 of the 29th of December of 1880 of this Secretary's Office is based, have been changed, the executive Power has decided upon issuing a new set of regulations bearing on the formation of the documents connected with the adjudications of unappropriated land on any title. From the time of receipt of the present circular in your offices, all documents to be drawn up for the purpose indicated shall be conformable to the following provisions:

*Adjudications by Way of Change of Title.*

(1) There shall be made an investigation *de facto nudo*, by means of the depositions of equal tenor of five witnesses, made before a Judge, Alcalde or a Corregidor, and in the presence of the District Attorney, said witnesses to declare that they know for certain: -

That the land which is desired in adjudication is unappropriated,

That the land is not destined for any determinate public use,

And that it is removed more than a myriameter from the tracing of projected railroads or such that are in course of construction.

The official who examines the witnesses shall certify at the bottom of the investigation as to the fitness of said witnesses for such deposition, in compliance with the requirements of the Judicial Code of such state or the national judicial code in force in the territories.

(2) The party interested shall submit a *promemoria* to the President or Governor of the State or the Prefect of the National Territory, in which he denounces the tracts as unappropriated and petitions for their adjudication of all or a part of them, stating the name by which they are known —if they have one—the province, department, municipality, district or corregidor's district, wherein they are situate; the land with which they are bounded and such other indications as may convey a clear knowledge thereof.

To this *promemoria* there must be added the investigation through witnesses referred to and the titles of concessions sufficient to cover the number of hectares of the tracts that are solicited, with the express warning that by way of title-change no more than 5,000 hectares can be adjudicated.

(3) Upon receiving the previously indicated *promemoria*, the President or Governor of the State, or Prefect of the Territory will order the denouncement made to be published in the *Official Gazette*; he also shall order that the Alcalde or Corregidor of the District where said tracts are situated, put up notices in the public places with the statement that the tracts comprised within the boundaries indicated have been petitioned for in adjudication as being unappropriated. In said notice the name of the lands petitioned for shall be given, the names of the owners of adjoining land and such other indications by which said tracts may be known clearly. These notices shall remain displayed for the time of 30 days.

If the adjoining owners, or persons believing to have a right to the

tracts solicited, put in a claim during the time in which the notices must remain displayed, such claims shall be decided upon in the administrative way in view of the legal titles that may be exhibited; if there be no claims the President or Governor of the State, or Prefect of the National Territory, shall appoint a surveyor and shall contract with him to make a plan of the land at the expense of the party interested, always remembering when entering into said contract the provisions of article 9 of Decree number 832 of this year. The Surveyor shall submit two copies of the plan and a scientific statement of the operations carried out for the survey and for the making-up of the topographical plan.

(5) On the plan there shall be indicated with different colors, aside from other points concerning topographical drawing, those parts of the tract which are prairies, those that are covered with underbrush and those that are wooded. There must be equally represented all the rivers and water-courses of any importance which irrigate the land specifying the names they might have, and the roads or paths that lead through it.

(6) Both the specified statement of the surveyor and the plans he makes pursuant to his contract, shall be signed by him and by the party interested, without which it [they] shall not have any legal authenticity for official purposes.

(7) If there be any settlers established in the tracts which are petitioned for, the surveyor shall survey and demarcate, both on the land itself and on the plan, the area occupied by every one of them, remembering in such cases the provisions of article 1 of the said decree.

(8) After the survey of the land has been carried out and after the plans of the same have been submitted, the President, Governor or Prefect, shall put on each of them a notice of authenticity with his signature and that of the respective secretary.

(9) When the documents have been prepared and all the requirements expressed in the previous sections have been complied with, the Governor, President or Prefect will issue the decision, provisional or that which he considers just, which will be communicated with such observations as he may deem fit to the Secretary of the Treasury, sending to the latter the original documents. As an essential part of said set of documents one of the plans authenticated must be sent at the same time, and the other copy will be deposited in the archives of the respective offices of President, Governor or Prefect of a Territory, with the understanding that the party interested may make use thereof when he has to take possession of the land.

(10) After the documents have been received at the office of the Secretary of the Treasury of the Union, the Executive shall issue the decision which he may deem fit and shall return it in order that through the respective President, Governor or Prefect the delivery of the land be ordered, in case the decision have been favorable to the party interested, in which case the office of the secretary of the treasury of the Union will cause to be cancelled the titles which have been presented in payment of the adjudication.

(11) The delivery of the land to the persons to whom the same is adjudicated, shall be effected conformably to the provisions in the Executive Decree number 334 of 1878 (*Official Gazette* number 4343), taking into account when effecting it that the rights must be saved of the cultivators who may have established themselves in the land prior to the provisory adjudication, with a dwelling-house and artificial cultivations (decree number 334 of which this regulation speaks, was abolished by decree number 878, published in numbers 8207 and 8208 of the *Official Gazette*).

(12) After the delivery of the land has been effected and the corresponding protocol has been added to the files, a title will be issued to the party interested, should he so wish it, in the terms of article 931 of the Fiscal Code; after that the set of documents shall be returned to the office of the secretary of the Union to be deposited definitely in the archives thereof. This will even take place in the case where the adjudicatory shall fail to petition for the execution of the title.

#### *Adjudications to Colonists or Cultivators.*

(13) Conformably with dispositions of articles 932 and 933 of the Fiscal Code, 15 of Law 61 of 1874, and in compliance with those of the national civil code obtaining here, the *traditio dominii* of unappropriated land cannot be considered as having been effected and perfected, if the title which proves the acquired property, be not obtained. This title is made up in some cases of the protocols of adjudication, demarcation and delivery by the national officials, determined by the laws and executive decrees on the matter, and in other cases of a public deed duly recorded conformably to the Civil Code, and wherein must be contained the protocols enumerated in article 931 of the Fiscal Code. But in every case the delivery of the *dominium* rests on an adjudication decreed by the National executive; without that the *traditio* does not take place, even if

pursuant to general laws or special laws the concession of unappropriated lands should have been made.

(14) Every person who as colonist or cultivator believes to have acquired any of the rights expressed in article 1 and its subdivisions, of Decree 832 of the current year, must solicit for himself the demarcation and adjudication from the President or Governor of the State or the Prefect of the National Territory wherein the land is situate, in the manner expressed in subsection 2 of this circular, enclosing in his petition the investigation through witnesses of which subsection 1 treats. In this investigation (protocol) of witnesses, the latter must in addition declare, that they know for certain that petitioner has a dwelling-house and artificial cultivation established thereon, and they shall likewise express the length of time of the occupation and the kind of cultivation. In the petition referred to the colonist shall likewise indicate the area that he is occupying, which he shall calculate approximately if he does not know it exactly.

(15) After a petition made up in the terms of the preceding section has been received, the President or Governor of State, or Prefect of the National Territory shall order the display of notices as indicated under No. 3 of this circular, and after the time for their display has passed, he shall order the demarcation of the land through experts acting in the community with the first political (administrative) power and with the representative of the attorney-general, at the place where the land is situated, if the latter does not exceed one hundred hectares. In the contrary case, that is to say when the land comprises an area larger than 100 hectares, the colonist is obliged to ask from the proper authorities the survey of the land as indicated in subsection 4. The demarcation of the land by experts will be effected in compliance with the provisions of articles 4 and 6 of the Decree referred to. If during the thirty days during which the notices must remain displayed there appears any person who objects to the denunciation and the petition of demarcation made by the cultivator or colonist, the controversy shall be settled in the administrative way in view of what titles the opponent may present. If, however, the opponent or the colonist should appeal from the decision, then the Judicial Power shall decide it in conformity with articles 4, 5 and 6 of Law 48 of 1882.

(16) After the demarcation or the survey has been effected and the protocol thereof has been added to the other documents, the latter will be returned to the president or governor of State or Prefect of the national

territory that he may decree the provisory adjudication, if the documents be in good order; if that be not the case, they shall be returned for remedy of such defects as they may have. When the documents are again received in perfect order, the said President or Governor of the State or Prefect of the National Territory shall decree the provisional adjudication and shall send them to the Secretary of the Treasury in order that the latter decree the definitive adjudication.

(17) If the definitive adjudication be decreed, provided there is cause therefor, and after the documents have gone back to the Governor or President of the State or Prefect of the Territory, who substantiated same, he will order that the delivery of the property adjudicated be made, in the terms of article 932 of the Fiscal Code.

(18) After the delivery has been effected and after the corresponding protocol has been added to the files, the authority that effected it will issue to the colonist or cultivator a certified copy of the decision of final adjudication and of the protocol of delivery, which copy after being duly recorded constitutes a legitimate title of property (articles 932 of the Fiscal Code, and 2652 and 756 of the National Civil Code).

(19) After the formalities preceding have been complied with, the documents will take the course determined in the final part of subsection 12 of this circular.

For the rest I call your attention to the provisions of executive decree 832, published in the *Official Gazette* 6230.

Yours respectfully,

F. ANGULO.

(Published in 6230-1882 of the *Off. Gaz.* & reprod. in 543-1893 of the *Off. Register.*)

VARIOUS RESOLUTIONS SHOWING THE OPERATION OF THE  
LAND LAWS FOREGOING.

RESOLUTION ON UNAPPROPRIATED LANDS.

SECRETARY OF THE TREASURY, SECTION 3.

DEPARTMENT OF UNAPPROPRIATED LANDS.

BOGOTA, July 28, 1894.

In order to settle the points consulted about in the previous *promemoria* it is herewith considered:

*First:* That inasmuch as the denouncement of unappropriated land is the basis of all further administrative proceedings, bearing on their adjudication, the former must contain the precise and exact statement of the number of hectares solicited, in compliance with article 883 and 912 of the fiscal code, for the purpose that the denouncement may have the character essential for a document attributed thereto by articles 931 and 944 of the same code.

*Second:* Inasmuch as the *promemoria* of denouncement must contain a minute description of the parcel of land or of the zone which is desired to be obtained, a description which, as guarantee of the rights of third persons, is published by means of official notices, article 914 of the same code provides that the demarcation expressed in the primary petition should correspond or conform itself by an exact coincidence with that expressed by the surveyor in the respective plan.

*Third:* Inasmuch as therefore the denouncers of unappropriated lands are obliged to determine with certainty from the day on which the petition is submitted to the respective official, the number of hectares which is solicited, and which must correspond with the titles presented, it is comparatively deduced that in the denouncement or primary petition of adjudication there shall be expressed as nearly as possible the boundaries within which the land to be adjudicated is comprised, and further that it is incorrect to indicate in the denouncement a demarcation covering a zone or region considerably larger than the one which is petitioned for, which, on the other hand, would give rise to fraud, and would interfere with the rights of other individuals to denounce and petition the adjudication of unappropriated lands in the same zone or region to the prejudice of the government, of agricultural industry and of colonization.

**IT IS THEREFORE RESOLVED**

*First:* Between two denouncers of whom the first has not met the legal formalities of which mention is made above, denouncing on the contrary a zone larger than that covering the hectares which is to be adjudicated to him, while the second although he has effected his denunciation subsequently has complied with said formalities, the latter shall be evidently preferred, and not only that, but the denunciation of the first party shall be rejected as infringing the law.

*Second:* According to the doctrine laid down, it is also evident that the denouement which fails to conform to the provisions of the law shall be rejected as of no value, in any stage in which the documents necessary for the adjudication may be from the very moment in which the respective official should find evidence of this lack of conformity with the legal provisions.

To be published.

For the Minister.

*The Assistant Secretary,  
JUSTINIANO CANON.*

**PROMEMORIA ON UNAPPROPRIATED LAND, AND RESOLUTION.**

**To His Excellency the Secretary of the Treasury, Bogota:**

I have petitioned the Gobernacion of this department for an adjudication in the Sierra Nevada de Santa Marta, and I supplicate Your Excellency that you deign to decide whether any other person may occupy for cultivation any part of these lands, comprised in the area denounced and petitioned for in adjudication.

The case to which my inquiry refers has not come about as yet, but I have good reason to fear that it is to occur, already in the next spring, when perhaps the adjudication has not been terminated as yet. It is not superfluous to inform Your Excellency that the denouncement and the corresponding notices were published during the term prescribed by law, and that no opposition has presented itself, as in fact no one could present such.

I am Your Excellency's obedient servant,

**MANUEL D. GRANADOS P.**

SANTA MARTA, September 7, 1894.

OFFICE OF THE SECRETARY OF THE TREASURY,  
 SECTION 3. DEPARTMENT OF UNAPPROPRIATED LANDS.  
 BOGOTA, October, 10, 1894.

Inasmuch as the land which the petitioner says that he has denounced is unappropriated land, as long as it is not adjudicated, any person or persons may establish cultivations thereon, but since it is required by the corresponding provisions that the cultivators in order to obtain a right to adjudication must occupy and cultivate it for four years, the mere fact of the present occupation does not constitute any right in favor of the occupants, if at the time of adjudication of the land to the petitioner this requirement has not been met.

Communicate and publish.

*The Assistant Secretary in Charge of the Office,*  
 JUSTINIANO CANON.

(*Official Gazette*, No. 96 11.)

RESOLUTION REFERRING TO THE PRECEDING PROMEMORIA.

OFFICE OF THE SECRETARY OF THE TREASURY,  
 SECTION 3. DEPARTMENT OF UNAPPROPRIATED LANDS.

BOGOTA, November 23, 1904.

AND WHEREAS:

*First:* Alinea 8 of article 1 of decree number 832 of 1884 says:

"No cultivator shall be permitted to sell the land that he possesses as cultivated land except after obtaining the title of property issued to him by the secretary of the treasury of the union, a title which shall not be definitive except when the cultivator proves that after having obtained it he has not abandoned the land for a time of not less than four years conformably to the provisions in article 8 of law 61 of 1874. In this case the purchaser acquires the same rights and obligations as the vendor possesses, being therefore held to continue the cultivation of the land, because if he were to abandon the tillage during the four years of which article 8 of the law 61 of 1874 already mentioned speaks, the land shall revert to the national domain.

"If the cultivator should sell the improvements before obtaining the title, the purchaser is held to continue the cultivation of the land, *in order that any rights may be recognized for him*, conformably to the provisions already established."

*Second:* And whereas the permanent cultivation for four consecutive years at least, and the building of a dwelling-house on the land is that which constitutes the *right* to the adjudication, the person who, without having obtained the latter, sells the improvements, loses this *right*, because the sale of the cultivation is equal to the abandonment thereof, before obtaining the definitive title, in which case the purchaser of the improvements is substituted for the vendor, as regards the obligation which the vendor had to continue the cultivation, and also as regards the right to obtain the adjudication of said land, after the fulfilment of the other formalities prescribed by the corresponding provisions.

NOW THEREFORE BE IT RESOLVED, In virtue of the provision transcribed, and of the proper interpretation of the other legal provisions on the concession of rights to cultivators of unappropriated lands, this ministry is of the opinion that the latter can indeed sell the plantations or improvements as fruit of their work, before having obtained the adjudication, but that they cannot reserve for themselves the right to the land, and still less to sell to a third party a presumed right as is that of adjudication of the land, a right which passes over to the purchaser of the cultivations and improvements because these latter, maintained and enlarged during at least four years, are those which give to the cultivator of unappropriated land the right to have issued to him the title of property of that tract on which he may have established himself, a title which is constituted by the definitive adjudication by means of the formalities prescribed therefor.

Communicate to the party interested, and publish this resolution.

*The Assistant Secretary in Charge of the Office,*

JUSTINIANO CANON.

*Official Gazette* 9645.

#### FORMS FOR PROCEDURE ILLUSTRATING OPERATION OF LAND LAWS.

##### 1. *Of the Promemoria for Making Investigation de Nudo Facto.*

MR. (JUDGE, ALCALDE, OR CORREGIDOR OF ):

I, N. N., of age, and an inhabitant of this (or such and such a ) district, petition you herewith respectfully that you summons to your office Messrs. N. N., N. N., N. N., N. N., and N. N. (there must be at least five deponents) and that you cite and cause to be present the corresponding agent of the attorney-general, taking therewith their affidavit on the following points:

1. Age, domicile, and general information required by law as to their relation or non-relation to me.

2. Whether they know for certain, and from what cause, that the tract of land known by the name of \_\_\_\_\_ (if it has any) situated in the place of \_\_\_\_\_ section of \_\_\_\_\_ Corregimiento of \_\_\_\_\_ of jurisdiction, and bounded by the following boundaries: (Follow the boundaries).

3. If they know for certain, and for what cause, that within the said tract of land I have established a dwelling-house and permanent cultivations (or alternate) such as (specify the kind) to an extent of hectares, approximately.

4. If they know for certain, and for what cause, that for \_\_\_\_\_ years I am established on said tract of unappropriated land, without ever having abandoned it (time of occupation must not be less than four years).

5. If they know for certain, and for what cause, that the said tract of unappropriated land is not destined for the nation, for any determinate public use.

6. If they know for certain, and for what cause, that the tract of unappropriated land involved is remote more than a myriameter from the lines of projected railroads or railroads under construction, and

7. Whether they know for certain and from what cause that within this tract of unappropriated land there are no mines or rock salt, precious stones, guano, or others, the ownership of which is reserved to the nation.

I also petition you that in every one of the affidavits you comply with mandate of article 633 of the judicial code, and at the end of the protocol with the requirement of article 596 and 599 of the same code, ordering that everything be returned to me.

(Here the date.)

MR. \_\_\_\_\_ (Alcalde, Judge, etc.).

(Here the signature.)

(In the *promemoria* drawn up for the summary investigation referred to above, for denouncing unappropriated land, by way of title of concession, the questions under 3 and 4 will not be put.)

## 2. *Promemoria for Denouncing Land.*

To THE HONORABLE THE GOVERNOR OF THE DEPARTMENT OF : \_\_\_\_\_

I, N. N., of age, and an inhabitant of this district (or some other), respectfully submit to Your Honor, that at the place of \_\_\_\_\_ section

of                 corregimiento of                 of this municipal district (or some other) province of                 of this (or some other) department, there is some unappropriated land, known by the name of                 , which is comprised within the following boundaries (follow the boundaries); and as I wish to acquire the property thereof as cultivator or colonist (or in exchange of title as the case may be) denounce it before you in legal form.

The tract which I denounce amounts approximately to                 hectares, of which about                 are cultivated by me, and I would state that the cultivations which I have there consist of (specify kind).

(In the *promemoria* where unappropriated land by dint of a title exchanged is denounced, it will read: The land which I denounce amounts to                 hectares, equal to the number covered by the title or titles which I attach.)

The land which I denounce, bounded as I have said, adjoins the following properties (adjoining owners):

I enclose in this denunciation the protocol *de nudo facto*, made up of the depositions of five capable and fit witnesses, by which I prove the character of the land as unappropriated, and the other conditions which the laws and decrees on the subject demand.

(When the land is denounced in exchange of title, it will be added: And territorial certificates of                 hectares each (express series and numbers of the certificates).

Therefore, my denunciation having been made in compliance with the provisions of the law, I supplicate your Honor that you deign to admit it, and order that it shall be given legal force.

(Here the date.)

To the Governor

(Here the signature).

PROCEEDINGS for the Make-up of Documents by Means of which Unappropriated Land is Denounced and Mode of Giving them the Proper Course in the Government Offices.

#### MEASURES FOR PREPARING THE DENOUNCEMENT.

The person or company that would like to bring about the adjudication of some tract of unappropriated land will submit a *promemoria* to any

of the judiciary or administrative officials, except the Prefects of the Provinces, in which they petition that in presence of the corresponding representative of the Ministry of Public Works five individuals, at least, whose Christian and family names must be given, shall be heard on the following subjects:

The deponent must state:—

(1) His age, domicile, general information about his person as demanded by the law, such as relationship to the petitioner, etc.

(2) That which is known to him for certain, having seen it, having heard it say so, or from any other cause, that the tract of land known under the name of

(in such and such a place) part

(such and such) of the jurisdiction of (such and such a township), is not appropriated.

If the boundaries be known, they must be indicated (circular No. 94 of 1884, paragraph 1).

(3) That he knows for certain (source of information) that within the tract of land referred to the petitioner has a dwelling-house and cultivated farmlands, specifying the kind of every one of them, covering

(so and so many) hectares, approximately (circular No. 94 of 1884, paragraph 14).

(4) That he knows for certain (source of information) that

(so and so long ago)

the petitioner or solicitant first settled in that tract of land, and that since he never has abandoned it. The time of occupancy of the tract of land must not be less than four years (see Resolution of the Secretary of the Treasury of the 10th of October, 1894).

(5) That he knows for certain (source of information) that the said tract of land is not destined for the nation nor any public use of predetermined character (section I. of the circular).

(6) That he knows for certain (source of information) that the tract of land unappropriated, involved here, is removed more than one myriameter from the tracings of the projected railroads or railroads under construction (paragraph 1 of the circular), and

(7) That he knows for certain that in the said tract of land there are no mines of rock salt, precious stones, guano, or others the ownership of which the Nation has reserved for itself (articles 1116, 1117, 1121, and 1126 of the Fiscal Code).

In the affidavits accompanying the petition for adjudication of unappropriated lands in exchange of a title of concession, items 3 and 4 need not be considered.

The official who receives the depositions must in every one of them meet the requirements of article 633 of the Judicial Code, and at the end of the statement the requirements of articles 596 to 599 of the Code (paragraph 1, alinea 4 of the circular).

#### DENOUNCEMENT.

After the information *de facto nudo* (bare fact) has been obtained, the petitioner proceeds towards making the denouncement by means of a promemoria addressed to the governor of the province, in which said land will be denounced as being unappropriated and a petition for their adjudication will be made, wherein it must be stated by which of the means, by which they can be petitioned for, the petitioner solicits their adjudication, whether as a cultivator or in exchange for titles of concessions.

There will be stated, moreover:—

(1) The name by which the tract of land which is denounced shall be known.

(2) The district, section, corregidor's district, and province wherein they are.

(3) The general boundaries within which the tract is contained.

(4) The number of hectares (if the amount is not known definitely, then the approximate area), specifying the area cultivated and that *not* cultivated, stating of what kind of cultivations the former consists.

(5) The lands which adjoin the tract and other indications which may help to give a clear idea of the tract (paragraph 2 of the circular).

In the petitions which are submitted by way of change of title of concessions, only that is excepted from the above which refers to the dwelling-house, cultivated land, and time of occupancy; such a promemoria must contain, aside from the summary information attached thereto, the titles of concession, equal in number of hectares to the ones solicited for award (paragraph 2, alinea 1 of same circular).

When presenting to the government (Treasury office) the promemoria referring to the denouncement, accompanied by the above-mentioned documents, these will be examined, and, if it is found that they are made up in proper form, the government will issue through the office of the Secretary of the Treasury a decree pursuant to which the denouncement will be

declared as having been admitted, and in the official gazette of the department, and at the expense of the denouncing party, a decree will be published where the denunciation made will be published (paragraph 3 of the circular).

In that decree the name of the land which is solicited for award is advertised, likewise its boundaries, the names of the owners of the adjoining lands, and all other indications by dint of which the land can be clearly recognised (paragraph 3 of the circular).

After the decree referred to has been published, and after the number of the gazette in which it appeared has been marked on the files, the same office will issue another decree whereby other decrees of the same tenor as the one published will be caused to be hung up at accessible parts of the said Treasury office and of the Alcaldia of the district where the land is situated. If the land should reach over into the territory under the jurisdiction of another district or corregimiento (Corregidor's district), also in the offices of that Alcalde or Corregidor, as may be the case, another decree like the preceding ones must be hung up.

These decrees must remain hung up in the said places for thirty consecutive days (paragraph 3 of the circular).

#### OPPOSITION.

If within the term during which the decrees remain thus exhibited, any opposition is raised, the term of exhibition shall be allowed to properly expire. When that term has expired, when the decrees exhibited have been taken down and after they are returned to the Treasury office, they will be added to the files, and a decree is dictated in which the opposition is declared as having been admitted (always provided that said opposition has been raised before the term during which the decrees were exhibited has expired), and a notification thereof is ordered to be delivered unto the denouncing party, a fair time being allowed to the latter to file a reply, and for this purpose the docket of the denouncing party, as well as the documents and petitions of the opponent submitted by the latter for the purpose of substantiating the opposition, shall be at the disposal of the denouncing party.

After the term stated in the above notification has expired, a reply has been filed, and after all the documents have been returned to the office of the Treasurer, the latter will cause the matter to be decided in the ministers' conseil (council), where a resolution will be taken that will be communicated to the parties in question.

If an appeal is taken from the said resolution by one of the parties, all the documents will be transmitted to the Circuit Court which has the competency over the said land, and the presiding judge of that court will decide the controversy (paragraphs 4 and 14 of the circular).

After the matter has been decided upon by the said judge, this official will return to the Secretary's office the decision basing on which a decree will be issued wherein the decision of the court shall be ordered to be carried out.

#### DEMARCATION OR SURVEY.

If the decision of the court does not nullify the denouncement made, the petition will be granted, and, since the granting in all cases involved the demarcation or the survey of the land, the decree will take the following shape:—

If the land which is petitioned for has been denounced under the claim of cultivator, and does not exceed one hundred hectares, the area will be defined by means of demarcation; but if it does exceed one hundred hectares, or if it be denounced under the claim of change of title of concession (in this case even if it does not reach one hundred hectares), the area will be defined by survey (paragraphs 4 and 15 of the circular).

In the first case, that is to say when the defining of the area is to be effected by means of demarcation, a decree will be issued wherein the Alcalde of the district where the land is situated is required to bring about the demarcation, accompanied by the municipal deputy and by two experts appointed and qualified by the Alcalde previous to the act, the said demarcation to be effected entirely in compliance with the provisions of the Executive Decree 832 and circular 94 of 1884 (paragraph 11 of the circular) (see circular 574 of the government of Tolima, 1890).

In the second case, that is to say when the area of the land is to be defined by survey, the decree issued will appoint a surveying engineer who must be of recognized integrity and skill. If the Treasury should find it difficult to appoint a surveying engineer, as the land is in another district, and it is not easy to know which engineer can be appointed, then the decree will instruct the Alcalde of the district where such lands are situated to appoint the engineer, to qualify him, and to make with the solicitant the necessary surveying contract, which for the fulfilment of the obligations of the surveying engineer must meet the requirements of section 9 of Decree 832, provisions 4, 5, 6, and 7 of the circular 94, both of 1884; the decree of the Secretary of the Treasury of the 15th of June, 1890;

the circular of the same office of 1896, number 1, and the decree of the same office of the 3d of April, 1897.

Moreover, it will be subject in all cases to the approval of the government (section 4 of circular).

A record will be made of the carrying out of the demarcation, and said record must contain: (1) name of land, situation, section, corregidor's district, and general district where situated; (2) name of cultivator; (3) area of land demarcated; (4) the boundaries within which the land is comprised, which also must be marked on the land itself in as clear a manner as possible, so as to avoid subsequent disputes between the cultivators themselves or with the owners of the adjoining land; (5) whether there are or not cultivators that have settled on the same land demarcated; and finally all the data and details concerning said act.

This document must be signed by the Alcalde in charge, the party interested, the expert, and the person acting as Secretary (article 6, alinea 5, of article 1, Decree 332 of 1884).

If there are any cultivators that have settled within the boundaries of the land demarcated, the commission will survey and define by boundaries, both on the land itself and in the corresponding act, by means of clear and precise boundaries, their lots, specifying their extent etc. (article 5, Decree 678 of 1890).

The same proceedings will be followed by the surveying engineer when surveying the land (alinea 5, article 1, of the Decree 832, and 4 of Decree 678 of 1890).

After the Treasury has received again the docket with the record of the demarcation effected, or with the plans and statement of the engineer, which must be signed both by him and by the party interested or his legal agent, the work will be examined, and, if it is found that any changes should be made therein, they will be returned to the commission or the surveying engineer, as the case may be, in order that such corrections be made, and the changes needed will be enumerated in the order in which the return of all the documents is ordered (paragraph 16 of the circular).

#### ADJUDICATION.

After such defects are put in order, and the documents are returned to the Secretary's office, a decree will be issued whereby the provisory adjudication of the land is decreed, and where it is ordered that the corresponding document, together with a copy of the plan made up by the surveyor, be submitted to the *Ministry* of the Treasury. Both plans must be

authenticated by the Governor of the respective department, and his signature again must be authenticated by the Secretary of the Treasury (*query: presumably by Secretary of the Treasury the departmental Sub-treasury is meant*) (paragraphs 9 and 16 of the circular, and alinea 6, article 9, of the Decree 832).

Upon return of the files from the Ministry of the Treasury the orders of said authority are complied with and carried out as indicated in the decree issued by it. If the same calls for a definite adjudication of the land, the Secretary of the Treasury will cause this decree to be communicated to the party interested, and the Alcalde of the respective municipality will be instructed to effect the delivery, provided that the adjudication is made under the head of *Cultivator*.

If it is pursuant to an exchange of titles of concession, the decree of the Secretary of the Treasury will communicate to the party interested the contents of that of the Ministry of the Treasury, leaving at the disposal of the said interested party the copy of the plan of the land which will be in the hands of the Secretary's office, in order that he proceed to petition for the delivery and possession of the land before the judge of the Circuit Court within the jurisdiction of whom the tract adjudicated is situated, in compliance with article 929 of the Fiscal Code (Decree 27 of 1897).

#### DELIVERY.

The delivery of the land will be effected pursuant to the case in hand by two officials, viz., the Alcalde of the district where the land is situated or by the judge of the Circuit Court of the same district (article 932 of the Fiscal Code, 1 of the Decree 27 of 1897, 1 of Decree 678 of 1890, and decree of the National Government of the 31st of October, 1898).

It is effected by the Alcalde when the adjudication of the land is made to the party as *Cultivator*, whatever may be the number of hectares adjudicated, and by the judge of the Circuit Court when the adjudication is by way of exchange of titles of concession, whatever may be the number of hectares adjudicated (Decree 27 of 1897).

If for some reason or other, the judge of the Circuit to whom it falls to do so cannot be present in person to effect the delivery, he can instruct the municipal judge of the district to do so (Decree 27 of 1897).

The delivery of the unappropriated lands adjudicated in behalf of any titles will be effected for the boundaries indicated in the decree of the Ministry of the Treasury by which the same definitely adjudicates the

land. When the delivery is effected pursuant to a change of title of concession, the copy of the corresponding plan must be exhibited (Decree 678, article 2, 1890).

In the record made of the act of delivery it must be stated whether or not colonists have settled within the confines of the land delivered, and the act must be signed by the officiating official, his secretary, the party interested, and by the State Attorney of the Circuit, provided that the adjudication be in exchange of titles of concession; also the private persons present, and who care to do so, can sign it (articles 1 and 3 of Decree 678).

If at the act of delivery of the land any oppositions should be raised, when the land has been solicited for adjudication by way of exchange of titles of concession, the judge will meet the requirements of article 8 of the Decree 678 of 1890. If it has been for a "Cultivator," it will not be listened to; but the official present at the delivery is bound to note down in the record made of the act the name or names of the cultivators settled within the delivered land, the extent of cultivation made by them, and the boundaries thereof. This must also be done by the judge in his case (article 4, Decree 678, and Decree of the Ministry of the Treasury of June 5, 1893).

After the delivery of the land has been effected, and after the act bearing thereon has been returned to the Secretary of the Treasury, the act of possession will be examined to make sure whether the delivering official met all the requirements of the law on the matter.

If any essential irregularity is noted which has occurred in the act of delivery, the documents will be sent back to the official in charge of the delivery, indicating on the corresponding order of return the defects that exist for correction thereof, and, if the irregularity took place in the act of delivery, he will repeat that.

If the record of delivery shows no defect, the files are ordered to be sent to the Ministry of the Treasury to be deposited in the archives of that office (paragraphs 12 and 19 of circular 94).

After the delivery has been effected of such land, the official in charge thereof will issue to the party interested the corresponding title, according as to how the adjudication has been made, that is: if by way of claim as Cultivator, a legalized copy of the act of adjudication (definite adjudication); if by way of exchange of titles of concession, and if the party interested so demands it, a public deed will be issued by the former in the form prescribed by article 931 of the Fiscal Code.

The files must contain a statement to that fact (paragraphs 12 and 13 of the circular 94, 1884).

FEES.

In the acts of demarcation and delivery of land unappropriated, adjudicated on any title, the officials are only entitled to a carriage that may be required for conveying them to the place where the act takes place, but not to any other fees: the experts will receive from the party interested the fees prescribed in the Judicial Code (circular 574 of October 15, 1890, issued by the Secretary of the Treasury of the Department of Tolima).

[TRANSLATED FROM N° 11, 1900, OF PETERMANN'S "GEOGRAPHISCHE MITTEILUNGEN."]

PROFESSOR EDWARD SELER, PH.D.

THE BOUNDARY DISPUTE BETWEEN THE REPUBLICS  
OF COSTA RICA AND COLOMBIA.

(With Map)

Everybody will admire the energy and persistence with which the Spaniards, the conquerors of the New World, endeavored to colonize, Christianize, and, above all, exploit agriculturally and develop the vast tracts of land discovered by them. At the same time one will understand why only in a few privileged territories the success was quick and thorough, while other territories remained for a long time unexplored and unconquered, some of them, in fact, remaining so to the very end of the Spanish colonial sovereignty. Owing to the fact that the opening up of these remaining territories was at times tried by one, at another by some one else, disputes between the different districts of administration were but a natural outcome, and in a certain way the government felt the inability of solving the difficulties, not only because it found it difficult to bring about a correct demarcation in territories unknown, but still more so because it was not always easy to ascertain in how far the crown had already been bound by previous decrees.

And from the old Spanish administration districts the dispute was transmitted to the independent State units which became the successors and heirs of the former. In this manner, since the establishment of the American republics, boundary disputes have appeared everywhere, which were settled only gradually and are now more frequently settled by arbitration.

Such a dispute existed until a short time ago between Costa Rica and Colombia, which has its origin in similar relations of the litigating parties, but which became particularly complicated here by the fact that in the old designations of the coast tracts and the territories belonging thereto there prevailed a great uncertainty, and that the same name was formerly used in a much more comprehensive meaning than afterwards. In order to correctly understand the quintessence of the subject of contest, some

historical determinations become necessary. The stretch of coast in question belongs to the parts of the continent of Central America that have become known earliest. Columbus had arrived on his fourth trip, 1502, at the opening of the great bay which he called "Carambaru," while other historians call it Cerabora, Ceraboro, Zorobaro, and which later, after its discoverer, was designated as Bahia de Almirante, but which is also known by the name of Bocas del Drago, Boca del Toro. Along the forest-covered banks the ships whose rigging swept the overhanging branches had safe entrance in any weather, and, what was of more importance still to Columbus, he saw here for the first time on the naked chests of the natives large ornaments of fine gold, and heard of a land where the gold was mined, and which he really found, about twenty-five leguas further to the east, and which he believed to be the Asiatic continent, "the gold mines of the province of Ciamba, which I was seeking." It is the name of this gold country, Veragua, which in the controversy between Costa Rica and Colombia plays a very important part.

It had not been possible for Columbus to enter with his vessels the river of Veragua, but in the mouth of a neighboring river, which he called Santa Maria de Belen, he found safe anchorage, and had been able to visit from there the gold mines which were not further than eight leguas removed therefrom. Full of great hopes he returned to Spain, but there he found that his great protectress Isabella, the Catholic, had died, and her husband, Ferdinand, was not willing to satisfy the extensive claims of Columbus. His son and heir, Diego Colon, instigated in 1508 a suit against the crown, which was carried along for many years undecided. In the meanwhile, there was found in the person of Felipe Gutierrez, son of a royal treasurer, Alonzo Gutierrez, an enterprising man who was willing to take charge of the colonization and opening up of the land. The widow of Diego Colon, Maria de Toledo, consented thereto, and thus with her consent, and by a royal ordinance of the 24th of December, 1534, Felipe Gutierrez was appointed governor of the Province of Veragua, and in the capitulation drawn up on the same date this province was defined more closely as the territory between the ends of the province of Castilla del Oro, or Tierra Firma, and the Cape Gracias a Dios, that is, a stretch of coast was turned over to him which is now distributed amongst the three republics Colombia, Costa Rica, and Nicaragua. And, inasmuch as the southern demarcation could be doubtful, the governor of the Tierra Firma was instructed on the 14th of July, 1536, by a special ordinance, "that if the land of the Cazique Urraca (that is, the central plateau of the Isthmus, at the southern slope of the watersheds)

belonged to the territory of the Province of Veragua, no conquest nor colonization and no barter should be attempted."

The expedition of Felipe Gutierrez miscarried completely. When the news thereof came to Spain, the heirs of Columbus and the crown agreed to leave their dispute to the arbitration of Cardinal Garcia de Loaysa, President of the Council of the Indies. According to the arbitration decision of the latter, which was accepted by the king, by an order of the 19th of January, 1537, the heirs of Columbus were to be compensated by the island of Jamaica, and a territory of twenty-five leguas square, in the province of Veragua, which, together with the ducal title, was transmitted to them as the hereditary property. The surveying of the twenty-five leguas in the square is minutely prescribed in the ordinance. They were to start at the river of Belen, which was included in the territory, and were to be measured on the same degree of latitude to the western part of the Bay of Ceravaro (Bahia del Almirante) and beyond, if necessary to make up the twenty-five leguas. From the terminal point, twenty-five leguas were to be measured on a meridian from north to south, and also at the starting point at the Rio Belen on the meridian of this river, and from the end of this latter twenty-five leguas, the southern side of this square was to be measured again on a degree of latitude to the end of the twenty-five leguas measured on the meridian of the Bay of Ceravaro.

Thus from the vast territory of the PROVINCE of Veragua, as it had been defined in the above-mentioned document, a small piece was cut out as the DUCHY of VERAGUA. The rest was, by ordinance of the 2nd of March, 1537, put under the administrative district of the Tierra Firma or Castilla del Oro, but with the especial addition "tanto quanto nuestra merced e voluntas fuere," or "as long as we are gracious and willing,"—in other words, as long as we shall see fit.

Therefore *two* Veraguas existed thenceforth. The Duchy, which is also mentioned as the Ducado de Corabaro, which was the private property of the Colon family, and the remaining Veragua, also shortly called Veragua, over which the king exercised immediate sovereignty, and which for the time being he had transmitted to the governor of Panama for administrative purposes. The opening up of the former, the duchy, had been transferred in 1539, by instructions of the chief of the Colon family, to a Conquistador just returned from Peru, Hernan Sanchez de Badajoz.

The conquest and colonization of the latter, that is the royal Veragua, was also to have been transferred to the same Hernan Sanchez de Badajoz, such having been the intention of Dr. Robles, who at that time was Presi-

dent of the Audiencia of Panama, and whose son-in-law, Hernan Sanchez de Badajoz had become in the meanwhile. This commission which Dr. Roblez thought he was justified in giving to his newly gained son-in-law Hernan Sanchez de Badajoz was, however, considered by the king as an infringement on his rights, and was annulled. The conquistador who had penetrated from the mouth of the Tarire River into the valley of the Cazique Coaza, to Corotapa, and who had founded there a colony in the midst of a dense population of Indians, was recalled.

At the court of Madrid there was at that time an enterprising man, Diego Gutierrez, another son of the royal treasurer, Alonzo Gutierrez, a brother of Felipe, who in 1536 had directed the unsuccessful expedition in Veragua, and to him the king conceded by a decree of the 16th of September, 1540, the conquest of the remaining parts of Veragua which were subject to the royal administration, from the Bay of Carabaro as far as the Cape Camaron. In spite of the objection of the governor of Nicaragua, the right was also conceded to him to occupy the land at the "*Desaguadero*" as far as fifteen leguas below its outlet out of the large fresh-water lake (Lake Nicaragua). The capitulation which was concluded on the 29th of November, 1540, with Diego Gutierrez, is interesting for the reason that here, for the first time, the name of Cartago is used for that part of the old province of Veragua which remained after the elimination of the duchy of that name, while in the papers referring to the undertaking of Hernan Sanchez de Badajoz the name of Costa Rica appears for the first time for the same territories.

The expedition of Diego Gutierrez was unsuccessful. To be sure, he succeeded in 1543 in getting a foothold at the mouth of the Sueri River, but he was not able to retain the colony there for any length of time, and when he sought for points of support further inland, he was attacked by the Indians at Tayutic where he and twenty-six of his companions fell. The right to continue the enterprise was reserved for his son and heir, but was finally suspended indefinitely as far as the execution was concerned.

As here, in the Royal Veragua, the enterprises were unsuccessful, so it happened also in the duchy of Veragua, where the enterprises started by the Colon family since 1546 had no success whatever. A grandson of the discoverer, Francisco Colon, died in battle. Finally, in 1556 the family ceded the unprofitable possession again to the crown, against a pension of three thousand ducats. Thus the two Veraguas had again become the immediate possessions of the king, but they were not combined into one.<sup>11</sup>

The duchy, which retained the name of Veragua, was left, under the

supervision of the Audiencia of Panama, for colonization to the citizens of Nata, a Spanish city situated on the Pacific coast just at the far side of the duchy. The lieutenant-governor of this city, Francisco Vasquez, obtained in connection therewith considerable results. He penetrated in 1558 as far as the watershed, discovered the gold mines of Turula, and founded, on the northern sea, the colony of La Concepcion, which since then bears its name therefrom. The colonization of the other part of the old province of Veragua, which it became since then customary to call Nueva Cartago, or Costa Rica, was also started successfully and from the Pacific coast, from Nicaragua. In 1560 Juan de Cavallon was given the necessary authorization by the Audiencia of Guatemala, and by a letter of the 15th of February, 1561, the king consented thereto. Juan de Cavallon penetrated from Nicoya into the territory of the Guetar, and founded there the city of Castillo de Garci-Muñoz. The simultaneous expedition of Father Juan de Estrada, who, on instructions from Juan de Cavallon, was to descend the "Desaguadero," and was to found a city of the name of Castillo de Austria, at the port of San Geronimo, on the coast of the northern sea, failed absolutely.

More successful than the former were the explorations of Juan Vasquez de Coronado in the subsequent years. He subdued on the Pacific coast the villages of the Couto and Boruca, and founded in the warm and fertile valley of the Guarco the city which, after this province, was called Cartago.. His captains, Peyerra and Diego de Trejo, penetrated from the Pacific side in the direction of Nata as far as the Llanos de Chiriqui, Cia, Xarixava, and Yado. And he himself, with his entire forces, moved from Boruca over the central cordillera, into the Valle del Guaymi, which opens towards the Atlantic side, and is populated by numerous Indian villages. This Valle del Guaymi is identified with the valley of the Cazique Coaza which Hernan Sanchez de Badajoz had reached. From the Valley del Guaymi he came into the provincia del Duy, which is situated not very far from the islands of Zorobaro, that is, the Bahia del Almirante, and he then returned to Cartago by way of Tariaca, Tococi, Tuyotique, and Atirro.

Similar distant expeditions were undertaken by Perafan de Ribera, successor of Vasquez de Coronado, and the successor of the former, Diego de Artiega Cherinos, was authorized directly by the king to take possession along the coast of both seas as far as the boundaries of the province of Veragua, being instructed at the same time to found three Spanish cities, one at the Bocas del Drago, that is, on the Bahia del Almirante, another in the Valley of Guanco, and the third one (on the Pacific side) in the Prov-

ince of Garavito (capitulation of Philip the Second in El Paso, December 1st, 1573).

At the same time, however, the governors of Veragua who had their seat in Concepcion de Veragua made expeditions into the valley of the Guaymi, which they considered as belonging to their administrative district, or wanted to consider in that light, protesting at the same time against the further advance of Diego de Artiega. By a letter of the 30th of August, 1576, the king was therefore forced to instruct the Audiencia of Guatemala to ascertain to which administrative district the Rio del Guaymi, the Bocas del Drago, and the Bahia del Almirante belonged. To be sure, we do not know whether the said Audiencia caused an examination to be made and what was the result thereof, but the fact is that in the year following, not at the Bocas del Drago, but on the Guaymi River, Diego de Artiega founded the Ciudad del Artieda de Nuevo Reino de Navarro, which to be sure, like the other settlements in this tropical forest coast, was not of any lengthy duration.

A lasting settlement and colonization of the country was only successful for the Spaniards in the valleys of the interior, lying in front of the foot of the northern transverse series of volcanoes. The eastern boundary districts, the forest districts on the Bahia del Almirante as well as the Llanos at the Golfo del Osa always formed an unsubdued and unexplored territory which from time to time was invaded, sometimes from one side and sometimes from the other, by expeditions and missions, practically without success. Both the Gobernacion of Costa Rica and that of Veragua were able to refer to royal letters encouraging such work. On the Pacific side, on the whole, the Punta de Burica was maintained as the boundary of the sphere of influence between the Audiencia de Guatemala which was the superior of the Gobernacion of Costa Rica, and the Audience de Panama or the viceregal office of Santa Fe de Bogota to which up to 1773 (for the former) and subsequently thereto (for the latter) the territory of Veragua was subject.

This is also expressed on the map made by the governor Lorenzo del Salto in the year 1620, and it is this map of Veragua which Manuel M. de Peralta found in the Archivo de Indias and which is reproduced in the 19th volume of the Review of the Society: "Gesellschaft fuer Erdkunde in Berlin." On the Atlantic side, however, the governors of Veragua always claimed for themselves the dominion as far as the river Tariri, while the authorities of Costa Rica have never ceased to consider as subject to their sphere of influence the Bahia del Almirante, and that more or less in its entire extent,

that is, about to the river Chiriqui, or Calabebora, or the land situated in front of the mouth of the same, which in old documents is usually called the Escudo de Veragua. The Rio Chiriqui el Viejo (old Chiriqui River) which flows into the sea east of the Punta Burica, and the Escudo de Veragua, have also been proclaimed in the constitution of Costa Rica of January 21st, 1825, as boundaries against Colombia. A *status quo* which Colombia virtually recognized in the treaty concluded on May 15th, 1825, in Bogota, and ratified July 9th, 1826. Very soon, however, the Colombian government showed the intention to secure for itself the valuable ports at the Bocas del Toro, and the districts at the Golfo del Osa or Golfo Dulce. By a resolve of the chambers of May 30th, 1836, a Colombian official was placed on the islands of Toro. More extensive claims were eloquently insisted upon by the Colombian writer Pedro Fernandez Madrid. After repeated efforts had been made to bring about a boundary regulation by means of a treaty and after repeated transgressions, complaints, and counter-complaints had been made, it was finally agreed in the treaty concluded at San José on the 25th of December, 1880, that the controversy be submitted to an arbitrator, and in the additional convention concluded at Paris, January 20th, 1886, Costa Rica proclaimed as boundaries claimed by it on the Atlantic side the Escudo de Veragua and the Rio Chiriqui or Calabebora and on the Pacific side the Rio Chiriqui el Viejo which flows into the sea to the east of the Punta Burica, while Colombia claimed on the side of the Atlantic the coast as far as the Cape Gracias a Dios, and on the side of the Pacific the opening of the Rio Golfito into the Golfo Dulce. Originally, King Alfonso XII. of Spain was chosen as arbitrator, but he died, however, in 1885. By a new convention, concluded November 4th, 1896, and ratified January 5th, 1897, the President of the French Republic was definitely appointed arbitrator. As is customary, the Costa-Rican-Colombian boundary controversy has called forth not only a series of smaller or larger polemic treatises, but also very profound studies which are of most extraordinary value for the history and geography of the territories in question. In connection with that we must mention above all the archivistic studies of Manuel M. de Peralta, ambassador of the Republic of Costa Rica to the courts of Europe.

In the polemic treatises enumerated in the note the boundary claimed by the Republic of Costa Rica, which in the additional convention of Paris January 20th, 1886, had only been determined by its extreme point, is defined more in detail as follows: From the Escudo de Veragua southward to the mouth of the river Chiriqui now so called flowing into the Atlantic

Ocean and following its course up stream as far as the source thereof at the Cerro Santiago, then along the watershed cordillera over the Cerro del Hornito Cumbre de la Playita and the Cerro de la Horqueta to the eastern principal source of the river Chiriquí Viejo and descending the latter to its mouth in the Pacific Ocean east of Punta Burica.

More exactly the boundary claimed by Colombia is described as follows: From the mouth of the Rio Golfito in the Golfo Dulce, on the Pacific Ocean along a meridian which crossing the Rio Coto which flows into the Pacific Ocean, and the rivers Lari and Coen which are tributaries of the Tiliri or Sigsaula, and therefore flow towards the Atlantic Ocean, reaches the Tiliri or Sigsaula at  $90^{\circ} 33'$  northern latitude, and  $85^{\circ} 31' 30''$  western longitude of Paris ( $83^{\circ} 31' 16''$  western longitude from Greenwich), and from this point in a straight line to the mouth of the Rio Saratiquí where it flows into the Rio San Juan, at  $10^{\circ} 43'$  northern latitude and  $86^{\circ} 15'$  western longitude of Paris ( $83^{\circ} 53' 46''$  western longitude from Greenwich).

The reasons which the representatives of Costa Rica adduce for the frontier claimed by them are based above all on the manner in which they measure the twenty-five *leguas* square, which, according to the royal ordinance of the 15th of January, 1537, were to be cut out of the province of Veragua for the Colon family, for even Costa Rica does not deny that these twenty-five *leguas* in the square—that is, the old duchy of Veragua—belonged at all times to the administrative district of Panama, and namely from 1773 to the viceroyalty of New Granada, wherefore they now must fall to Colombia.

Pursuant to the text of the royal ordinance Peralta measures the twenty-five *leguas* on the latitude of the river of Belén, but he measures them on the TRUE latitude which passes entirely outside the Bahía del Almirante, south of it, and he reached the result that he fixes the western extremity of the duchy of Veragua at  $8^{\circ} 54'$  northern latitude, and  $82^{\circ} 6'$  or  $82^{\circ} 16' 42''$  west longitude of Greenwich, according as to whether one allows twenty *leguas* or only  $17\frac{1}{2}$  *leguas* per degree, the latter being the *legua* of Burgos. As against that Colombia asserts, and it seems justly too, that in the royal ordinance it had been said expressly that the boundaries of the duchy of Veragua were to reach to the western part of the Bay of Caravero (or Bay of Almirante) and, if necessary, beyond that; further, that according to the wording of the royal ordinance the whole duchy was to be called Bahía de Carabaro, and was actually called Ducado de Corobaro, for instance in the royal ordinances signed at Valladolid on the 26th of February, 1528, and that it was therefore impossible that the Bahía del Almirante could be left en-

tirely outside of the boundaries of the said duchy. In fact, it is almost certain, and the old maps confirm this too, that the geographers of the king assumed the course of the coast as being exactly from east to west, and that they therefore wanted the twenty-five *leguas* measured along the coast to the western part of the Bahia del Almirante. It is even probable that in the controversy between the king and the heirs of Colon the arbitrator only conceived the idea of prescribing twenty-five *leguas* square for the duchy because he desired to include the Bahia del Almirante, and the gold mines of Veragua in the duchy, for twenty-five *leguas* is the very distance which in his letter of July 7th, 1503, written in Jamaica, Columbus calculated from Carambaru, *i.e.* Bahia del Almirante, to the gold mines of Veragua. The representative of Costa Rica believes that he can derive further from other reasons a title for his state to the whole Bahia del Almirante, inclusive of the eastern part thereof, which to-day, as a rule, is designated by the name Laguna de Chiriquí. He asserts that the various explorers, basing on the royal order which authorized them to extend their occupancy and colonization to the boundaries of the duchy of Veragua, also took possession of the districts at the Bahia del Almirante, and had founded there colonies, Diego de Artieda having actually been commissioned to settle one of the three Spanish cities which his contract obliged him to found, at the Bocas del Drago, or Bahia del Almirante. According to Peralta, both Corotapa whither Hernan Sanchez de Badajoz was said to have penetrated, and also the Valle de Guaymi and the canton of Duy, are situated on the shores of the Bahia del Almirante, and he identifies the Puerto of San Geronimo with the Bahia del Almirante, and the Rio del Guaymi with the Cricamola River, which at the southeastern end of the large bay flows into the Laguna de Chiriquí, and he therefore also places the two ephemeral Spanish settlements Castillo de Austria of Father Juan de Estrada, and the Ciudad de Artieda, founded by Diego de Artieda, the former at the western and the latter at the eastern end of the Bahia del Almirante.

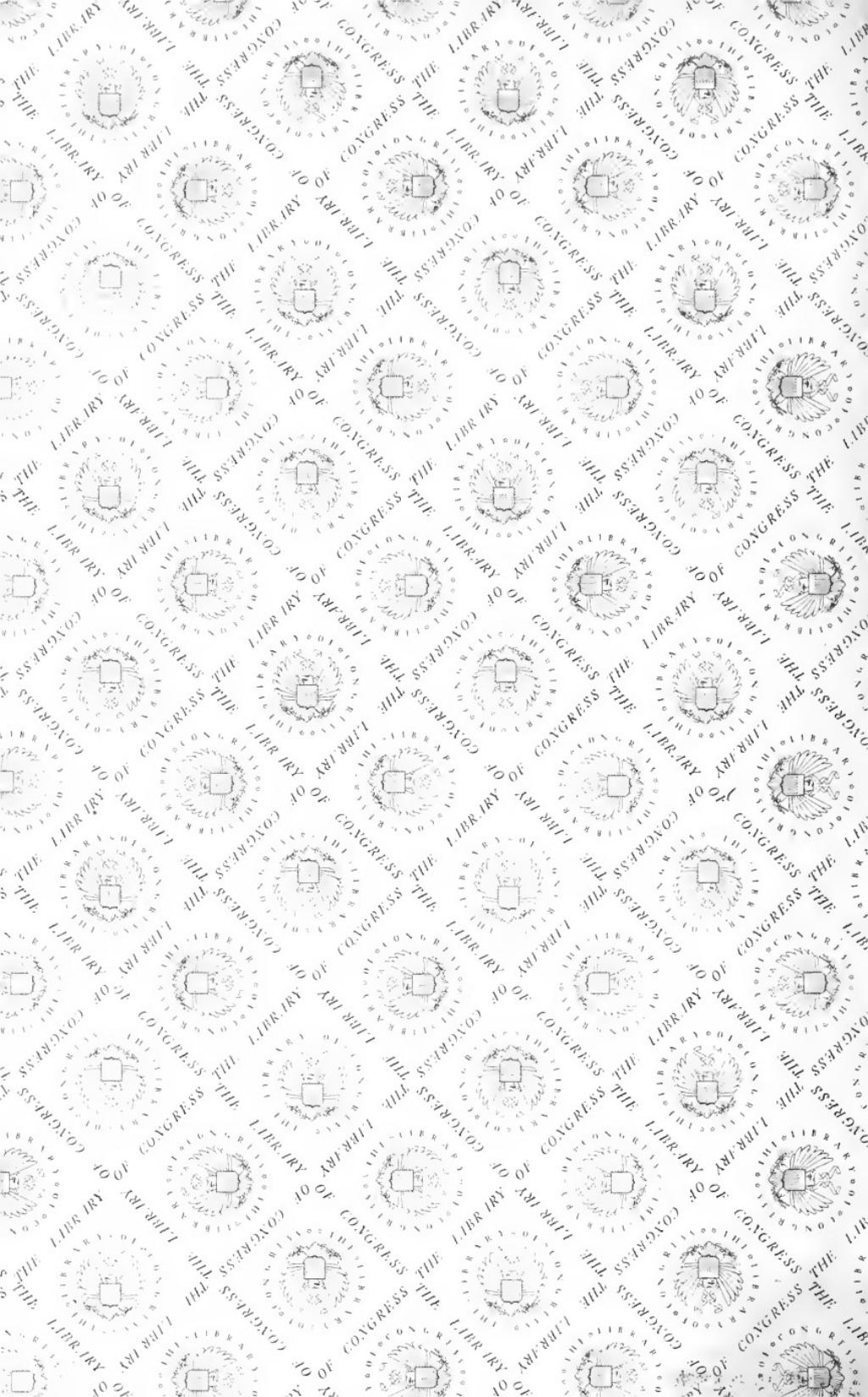
(NOTE.—The remainder of this article deals with some controverted details, and, though interesting, adds no information now pertinent to a general understanding of the dispute.)

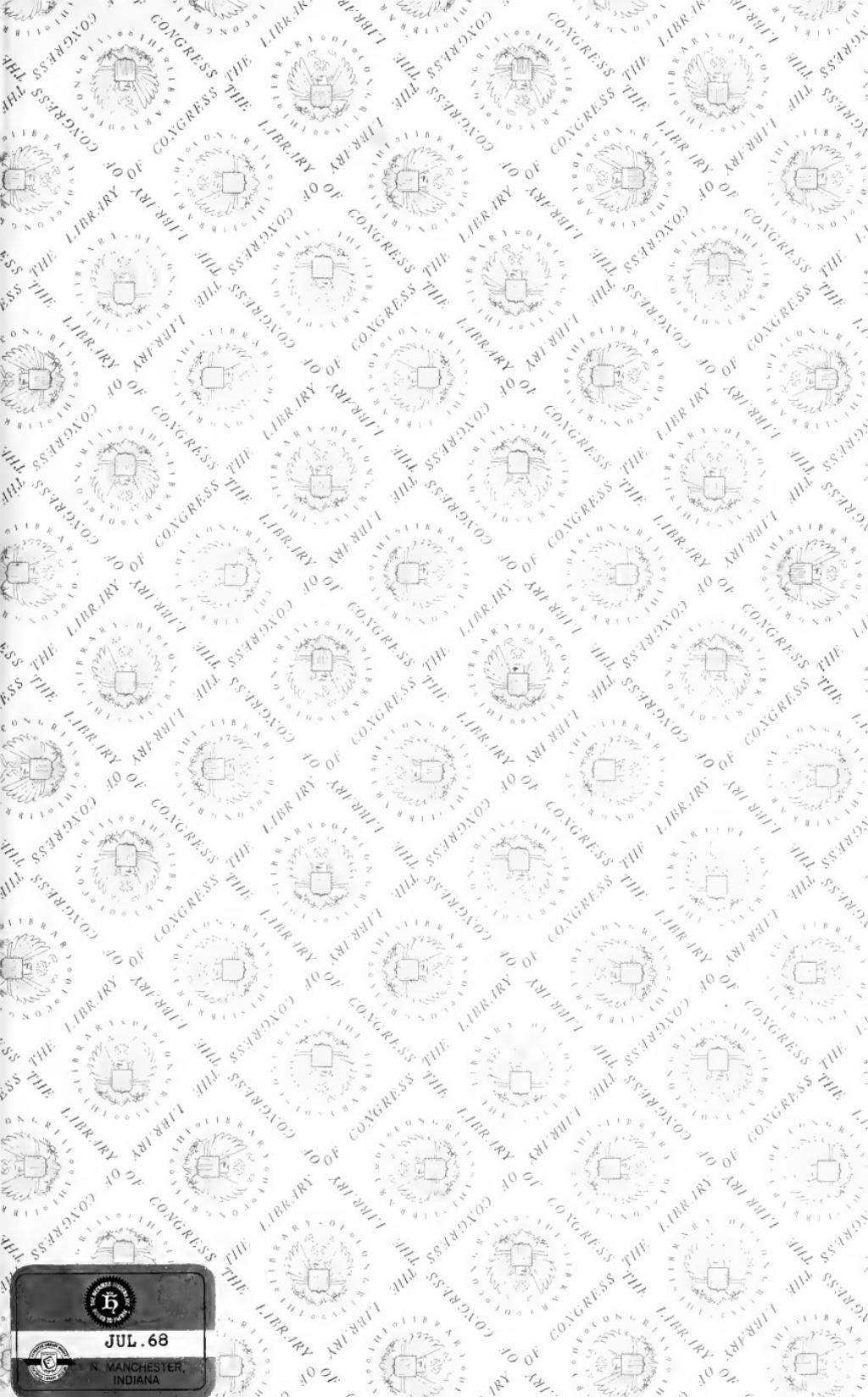












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